¶An exposicion of the kinges prerogatiue collected *out of the great abridgement of Iustice Fitzherbert* and other olde writers of the lawes of Englande, by the right worshipfull sir William Staunford Knight, lately one of the Iustices of the Queenes maiesties court of comon pleas:

Wherunto is annexed the Proces to the same Prerogatiue appertaining.

1568.

To the right honorable sir Nicholas Bacon knyght, lord keeper of the great seale of England: Rychard Tottell wisheth health and long lyfe, wyth encrease of honor.

NOt long sythens, right honorable, and my especiall good Lord, there was deliuered to mee A collection of the kinges prerogatiue, whiche Maister Staunforde had gathered and dedicated vnto your honour: which woorke bycause it is thought well of by the Sages of the lawe, and well worthy to be printed, I am therefore the bolder to put it in print, and publishe the same. And although the saide Maister Staunforde verie shortlye after that hee hadd dedicated the same booke vnto your Lordship, were for his wisedome, grauitie, learning, integritie, & syncere dealinge, aduaunced to be a Iudge in the chiefe Court of this Realme for common plees, and for his good seruice therein was by iust desert made knight, and albeit that your Lordship also sythens that tyme haue achieued the place,

title and degree of high honour by the iudgemẽt & calling of the Queenes moſt excellent maieſty: Yet I haue printed the Epiſtle dedicatorie of the ſaid woork, in the ſame termes that the Authour thereof vſed, and with the ſame ſtile that your honour, and he both then had, when he dedicated the ſaid woorke vnto your Lordſhip, as a Monument and token of the mutuall & long continued amitie betwene you: moſte humbly praiyng your Lordſhip to accept in good parte, according to your accuſtomed goodnes, this my boldnes with your honour, and to pardon the ſame.

This 20. day of Nouember.

Your honours moſt bounden
Richard Tottell.

¶ Guilielmus Staunfordus Nicholao Bacono Regie Maieſtati a Tutelarum procuratione. S.D.P.

(⁂)

QVanquam Anglicanę leges (amice ſingularis) haud minorem merentur laudem,quā Iudex Forteſcueus libro de earum laudibus conſcripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis diſſita ſit,profectio ad eam tam ſupra modum longa ac operoſa, tū vię et ſemitę tam aſperę,tā ſalabroſę,tam inamęnę ſint,vt ad ſui aditum pauciſſimos inuitet,quā plurimos ab ſterreat,vel potius auertat: Optarem in tanta iuriſperitorum turba:quam Anglia nunc habet, aliquid excogitari poſſe,leuandis legum Studioſis, prolongo iſto ac moleſto itinere. Vt propiore ac commodiore via ducti,valerent et proficiſcēdo & abſoluto itinere,alias deguſtare literas:quibus, non ſolum legalem ſcientiam multum illuſtrarent,ſed et munia eis a Regia Maieſtate mandata,tum pulchriūs, tum honorificentiūs, adminiſtrarent. Id quod(meo iudicio)cōmodiſſimē fieri poſſit,ſi tituli,in magna(quā vocant)Fitzherberti Epitome, vel a Iudicibus noſtris,vel ab aliis legum peritis,ſedulo forent euoluti atq; elaborati,hoc eſt,omni titulo,in claſſes ac ordines diſtributo, ſingulis eorum actis ac cauſis,certę legum regulę ac Maximę preſiderent. Exempli gratia. In Breuis titulū cadere poſſunt hec videlicet,Forma, vitioſa Nomendatura,ſeu pſonę,ſeu vici,Eadē res bis petita, Obitus vel actoris vel rei, Nominis alterutrius partis pēdente lite mutatio, ceteraq; huiuſmodi quę nunc nimis longo titulo ſperſa tam tumultuariè reperiuntur: vt multo maiorem tum eruditionem,tum ſudores,tum vigilias,exigat eorū diſtributio , quā rectè diſtributa

ediſcere. Et tamen non poſſum committere, quin tantę epitomes ſcriptorem vel ampliſſimis laudibus veham, qui ſuma ſua doctrina, exactiſſimo iudicio, immenſis ac pene dixerim exanclatis laboribus, tam numeroſam voluminum multitudinem, quibus vel legendis vix vnius hominis ætas (quantũlibet viuacis) ſufficeret: in vnum dũtaxat volumen atq; adeo epitomen cõtraxit, vt nunc noſtratibus iuriſperitis modo volentibus minima opera cõponere liceat: quippiá, tá facile, tam vtile, tam frugiferũ: vnde ſtudioſi dimidiato tẽpore quo ante hac legibus obdormire ſint viſi: cum maturiorem, tum certiorem noticiam aſſequerent'. Quo nomine: rei mihi tam vehementer expetitę: typum quendam propoſui, ac quaſi primas inde lineas duxi, Recipiens ad me, huiuſmodi p̃dictorũ titulos: qui Regiam prerogatiuá ſpectát: nõ quod ſum aliqua ex parte dignus, rem tam eximiam, tanque ſublimem tractare: nec quod eruditione id preſtare valeam: Siquidem de meo, nihilo plus hic eſt, quá collectio ac diſpoſitio tantum earum rerum, quę eiſdem titulis includũtur: Sed magis quod iſtud meum commentitium, qualecunq; ſit, tibi ſemper deſtinaueram, id quod in nullum alium preter hunc titulum, cõmodè experiri potui, tum quod ad magiſtratum tuum Regij procuratoris tutelarum, maxime pertinere videbatur, tum quod compertum habeo, te iuriſprudentię incũbentem, hũc quem propoſui morẽ hactenus obtinuiſſe: quod fecit, vt reliquos tuos contemporaneos eruditione: multis ſtadijs precurras: tum denique quod tuum iudicium ſuper hiſce rebus in quibus aſſiduè verſaris ac exercitaris requirõ. Certus me hic rem habere cum homine tam amico, vt ſi quid lectione dignum inuenerit: id pergratè ſit acceptur⁹ ſin minus, certè ęqui boniq; conſulturus, reliquum quod habet vitii: emendaturus, aut ſaltem ad id coniuere velle confido. Proinde iſtud, quicquid eſt, tibi nuncupo, lege, ac pro tua voluntate fruere.

Vale.

To the right woorshipfull and his *singuler frend Nicholas Bacon, the kings* Attourney of his court of wardes and Lineryes Willyam Staunford wisheth helth, long lyfe and prosperous succesſe.

(.˙.)

Al beeit the lawes of England tyght singuler frende are woorthy no lesse honor, prayse and commendacion, then Justice Forteſcue in hys booke wrytten of the prayses therof dooth attribute and geeue vnto them, yet forasmuche as the knowledge of the sayd lawes is placed so farre of, the iourney thereunto so exceeding long and painfull, and the wayes and pathes so rugged & vnpleasant: I woold wish that amongest such plenty of lerned men as bee at this day some thing were deuyſed to help ỹ ſtudents of their long iorney, ỹ they (being led a more nere & pleasãt way) might both as they went and after they came to their iorneis end gather some other knowledge, not only therewith to garnish their owne science, but also the better to serue in such honorable roome as they bee called to serue the king & soueraine lord in. Which thing might wel come to passe after my poore mynd, if such titles as bee in the great abrigement of Justice Fitzherbert were by the Juges or some other learned men laborɔd & ſtudied, that is to say, euery title by it ſelf by ſpectall diuiſions digeſted, ordered & diſpoſed in ſuch ſort as that all the iudicial acts and caſes in the ſame might bee brought & appere vnder certein principles, rules and grounds of the ſaid lawes. As for exaumple, vnder the title of Briefe might come theſe titles, Fourm, Miſnaming of the perſõ, miſnaming of the towne, One thing

twise demaunded, death of the plaintifs syde, death of the defendaunts syde, chaunging of the name of the pleintise or defendaunt hanging the suit, with many such other lyke which now as thyngs scattered abroad and out of order lye hidden within the said long tytle that it requires much more learning, payns and study well to order and dispose the matter in the same, then (after order made) to learn & bear it away. And yet surely there cannot bee too much praise and commendation geeuen vnto that great learned man the Auctor of the said great abrigement, which by his great learning, exact iudgement and intollerable payns, brought such an infinit nomber of volumes (to ỹ reading whereof a mans lyfe woold scant haue suffysed) to a much more lesse and narower compasse, whereupon now these learned men wyth lesse payns might compyle the thyng that shoold bee so easy, so profitable and fruitful to the students thereof, that in half those yeres they now ly sleeping in, they might come to a ryper & more certein knowledge and better iudgement: For which cause I haue drawen as it were a patern of the thing I so much desyre, taking vpon mee such tytles as appertain vnto the kings preroga-tiue, not as one in any parte woorthy to treat of a thyng so high and pretious as that is or in learning sufficient or hable thereunto (for of myne own here is nothing more then only a collection and disposition of that that is alrea-dy contayned in the said titles) but rather because I haue always meant this deuise vnto you, which I coold not doo or practise so well vppon any tytle as vppon this that ap-pertaineth vnto your office of Attourneyship of the war-des and liueries, partly for that I know your self to haue obserued the lyke order in your own study, which in few yeres hath gotten you aboue other the great learning you haue, partly also for that I couet your iudgement in these matters wherewith you bee dayly in vre and exercised,

knowing

knowing that I haue to doo heerin with one so much my frind that if there bee any thing woorthy the readyng hee will take it thankfully, and if not so, well, yet wil hee take yt in good part, the rest that is amisse hee will bear it with mee. This therefore whatsoeuer it bee I dedicate vnto you, read it, peruse it and make of it what you will. Fare you well, from Greys Inne the vi. of November. Anno. do. 1548.

(.*.)

¶ Les ſummaries de les chapters de ceſt preſent liuer.

Finis.

¶ Prerogatiua regis, edita, an. 17. E. 2.

Le Roy auera le gard de touts lour terres que tient de luy en chie :. Chap. i.

DOminus rex habebit custodiam omnium terrarum eorum qui de ipso tenẽt in capite per seruiciũ militare de quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierunt de quocunq; tenuerint per huiusmodi seruitium dum tamen ipsi tenuerunt de rege aliquod tenemẽtum ab antiquo de corona vsque ad legittimam ętatem heredis : Exceptis feodis Archiepiscopi Cantuariensis, Episcopi dunolm̃ inter Tyne et Tese, feodis Com̃ et baronum de marchia de terris in marchia vbi breuia domini regis non currunt. Et vnde predict' archiepiscopus, epus Com̃ et baroñ habeant huiusmodi custodiam licet alibi tenuerunt de Rege.

Prerogatiua is as much to say as a p̃iuilege or p̃eemi̊nence that any person hath before an other which as it is tollerable in some, so it is most to bee permitted & alowed in a p̃ince or soueraigne gouernor of a realm. For besides that, that hee is the most excellentest & woorthiest part or member of the body of the common wealth, so is hee also (through his good gouernance) the p̃eseruer, nouriſher, & defender of all the people being ẏ rest of ẏ same body. And by his great trauels, study & labors they enioy not onely their lifes lands & goods, but all that euer they haue besydes in rest peace & quietnes, as Seneca De consolat' ad Polibium sayth: Omniũ domos illius vigilia defendit, oĩum ocium illius labor, oĩm delicias illius industria, omnium vacationẽ illius occupatio. For which cause ẏ laws doo attribute vnto hi al honor, dignity, p̃erogatiue & p̃eminẽce, which p̃erogatiue doth not only extend to his owne persõ, but

vocat progatiue vñ

ẏ prime ẏ moste excellente & woorthyest member of ẏ body of ẏ domen rectẏ

but also to all other his possessions goods and cattels. As that his person shalbee subiect to no mans suit, his possessions cannot bee taken frō him by any violence or wrongfull disseisin, his goods and cattels are vnder no tribut, toll or custome, nor otherwise distrainable: wyth an infinite nomber of prerogatiues more, which were to tedious here to recyte. Howbeit for so much as in euery realme, the kinges prerogatiues are no small part and portion of the profits and commodities of the Coron of the same, & namely within this realm of England, it hath been thought good heretofore to declare and set furth in writing certaine of the most highest and weightiest matters and articles touching the said prerogatiues. And hereuppon was there a declaration made in wryting by auctority of parliament holden in the .17. yere, of the raigne of kyng Edw. the .2. the beeginning whereof is in maner and fourme as is aboue written: Howbeit this parlement maketh no part of the kings prerogatiue, but long tyme before it had his beeing by thorder of ẏ comon law, as plainly may appere by them ẏ haue writen before ẏ making of ẏ said statut of prerogatiue. For Glanuill that was chiefe Iustice in king Henry ẏ .2. days writing of this matter saith in this wise. li. 7. c. 10. Notandū quod si quis in Capite de dño rege tenere debet, tunc eius custodia ad dominum regem plene pertinet, siue alios dños habere debeat ipse heres siue non, quia dominus rex nullum habere potest parem, multo minus superiorem. Also Bracton which wrote in the latter tyme of k. Henry ẏ 3. sayth. li. 1. de custod' & marit' dñorum. Si aliquis heres terram aliquā tenuerit de dño rege in capite siue alios dños habuerit siue non, dominus rex aliis prefertur in custodia heredis siue ipse ab aliis prius feoffatus fuerit vel posteri', quū rex parem non habet in regno suo. Both these writers doo not only agree in euery point, but also geeue a reasō why the king shoold haue the prerogatiue contained in this first

chap.

chapter. Also Britton, an other old writer whych wrote his booke in kyng Edward ỹ firſt name ſayeth, Li.3.cap.2. Des heires nequedent ſi ils y eient aſcuns qui aunceſtre moruſt ſeiſie de aſcũ terre tenu de nous en chief des auncients demeans de noſtre corone volons auer les gards de touts les terres dõt gard appent q̃ deiuent deſcend a ceux heirs cõe lour heritage oueſque touts les blees en tyles terres troues maintfoits de qui fees q̃ les terres ſont. Britton here not only agreeth wᵗ the other, but alſo geueth ỹ king the corn growing vpon the grounds which the kings tenant holdeth at the time of his death. Also in the great Abridgement of Fitzherbert Prerogatiue. 26. you ſhall fynde in Anno. 21. H.3. written in this manner. Nota quod lex anglię et conſuetudo eiuſdẽ eſt quod a quibuſcunq; aliquis feoffatus fuerit dũ tamen a dño Rege aliquo tempore feoffatus fuerit p tenementũ qd' tenetur p ſeruic̃ militare, quod dñs rex habeat cuſtod' omniũ terrar' et tenementorũ tã de feoffamẽto aliorũ quã de feoffamento proprio. Which text if a man wil any thing weſt hee may make the kings prerogatyue more liberal then is made or declared by this ſtatut or any other the wryters before remembred, for it extends to any lands holden of the king by knights ſeruice whether they be holden of the king in capite or not: but for aſmuch as ỹ ſayd other writers haue written ſo playnly in this matter wee wil ſtand to them & extẽd the prerogatiue no further: howbeit (as I ſayd) all thoſe writers being ſo long before the making of this ſtatut doo plainly argue & prooue that this ſtatut dooth but confirm and declare that ỹ was the common law before, vnles wee woold doubt of the tyme of the making thereof, as Littleton dooth in H.15. E.4. f.12.f.13. but without doubt it was made in kyng Edward ỹ ſeconds time, & that plainly appeareth by the woords cõtayned in the.4. chapt of this prerogatiue, which bee theſe. Et illa voluntas tempore Regis. H. patris Regis E. eſtimari conſueuit &c. Which woords were not writen in kyng Edward the firſt days, for then the woords had been patris noſtri,

ỹ kings to haue ỹ Dowre growing vpon ỹ grounde at ỹ death of ỹ kings tenaũt &c

noſtri,ſo that (as I think) it is not to bee doubted but that it was written in the time aboue limitted and expreſſed. Then goe wee to therpoſition of this firſt chapter of prerogatiue. The woords bee, dominus rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſeruicium militare. Theſe woords goe generally to all the kings tenaunts, that is to ſay, aſwell to his tenaunts for terme of life,as to his tenaunts of eſtate of enheritaunce, if it ſo bee that hee that is in the reuercion haue the ſayd reuercion by diſcent, and bee heire vnto the ſayd tenaunt for terme of life,not forcing whether hee haue the reuercion by diſcent from the ſayd tenaunt for terme of life or els from any other auncеſtor,as take the caſe to bee this,a mã holdeth no lands of the king but onely as tenaunt by the curteſie,and thoſe lands are holden in chief by knights ſeruice,and the ſayd tenaunt by the curteſie is ſeaſed in his demeſne as of fee of lands holden of other lords & dyeth,the lands holden of other diſcend vnto him in the reuercion which is in deede nert heire vnto the ſayd tenaunt by the curteſie,in this caſe the king ſhal not onely haue the wardſhyp of the lands that were holden by the curteſie if ẏ ſayd heire bee within age, but alſo the lands holden of other by vertue of this prerogatiue. And if the ſayd heire were of full age at the time of the death of the ſayd tenaunt by the curteſie,the kyng ſhall haue primer ſeaſon both of the one land & of the other,as it appeareth in the new Natura breuium.fo.258. Like law is it if a woman bee indowed of lãdes holden in capite and is ſeaſed in fee ſimple of lands holden of other and dieth ſeaſed,and they diſcend vnto ẏ heire which is in the reuercion, in this caſe the kyng ſhall haue both theſe lands by vertue of this prerogatiue,lyke as hee ſhall haue in the other caſe before,and that may you ſee in 26.li.aſſ. P.57.for in both theſe caſes they bee the kings tenãts,& hold of him by knights ſeruice in capite,for tenãt in dower

dower in the kings case holdeth not of the heire but onely of the king, as it shall appeare more fully hereafter fo. 10. But if hee in the reuercion bee not heire of the lands holde of other in the cases aboue remembred otherwise it is. But what if hee in the reuercio haue the same reuercion by purchas and not by discent whether shall the kyng then haue his prerogatiue or not? and as to that it shoold seeme by the new Natura breuium. fo. 259. that the king shall haue his prerogatiue in that case also, for there the remainder was to the heire and to his wife and to his heires of their two bodies lawfully begotten, & the husband in the remainder did sue liuere, howbeit against ỹ law as mee seemeth, Ideo quere, but if the case in the sayd new Natura breuium had been, that lands holden by knights seruice in capite had beene geeuen to one for terme of his lyfe the remainder ouer in fee which parson in the remainder hath issue and dyeth and the tenaunt for term of life holdeth lands of other Lords and dyeth which descend to the issue that is in the remainder, here it might bee sayd that the king should haue prerogatiue in the whole like as hee had in the cases before remembred of tenaunt by the curtesie and tenaunt in dower, for the like reason will serue in the one case that serueth in the other. The woords of the statut bee further, de quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierũt de quocũq; tenuerint. These woordes rather apperteigne vnto the lands holden of other then to the lands holden of the King in Capite, as it shoold appeare by the cases beefore remembred, and then by these woords the kyngs tenaunt in his lyfe tyme must himself bee seased eyther in possession or reuercion of those lands that bee holden of a common person that shall descend vnto his heire. For if hee were not seased thereof but they discend vnto his heire from some other aunceſtor, the kyng shall not haue his prerogatiue in them as appeareth

reth in M.15.E.4.fo.10.but whether the kings tenant were seased of thē in his own right or in another bodies right it maketh no differēce. As take ẏ case hee were seased of thī but in right of his wife & hath issue & dieth, his issue is in ẏ kings ward for the land that his father held in Capite, and afterward the wife dieth the issue being still in ward, the kyng shal haue Prerogatiue in these lands of the wife also, because the husband was seased of them in his demean as of fee the day of his death, & so within the cōpasse of this statut. And this case may you see in M.13.H.4.f.6. And note, that notwithstanding this statut speaketh but of lands, yet seruice are to bee taken by the equitie of the same, as yt is plainly prooued by the woords of Diem clausit extremū, which sayth Quantum terre tenet de nobis aut de aliis tam in dominico quā in seruicio. So that if one hold of ẏ kings tenant by certayn seruices, the kyng shal haue the seruices in ward, for they bee in nature & place of the land ẏ is holden, & so shal it bee supposed. And therefore when ẏ kyng hath those seruices in ward and the tenant that holdeth by those seruices dieth his heir within age, if the sayd seruices were knights seruice the kyng shall haue ward by reason of wardship: But yet by that no prerogatiue in the other lands of the second ward which are holden of the other Lords, as it may appeare in Gard. 105. A.6.R.2. For the kings tenant was neuer seased of those other lands ne yet of the seruice that they were holden by, and so without ẏ compasse of this prerogatiue. Like law it is where the kyng hath the temporaltie of a bishop in hys custody duryng the time the Sea is vacant, and one that holdeth of those temporalties by knyghts seruyce dyeth his heyre wythin age, the kyng shall haue the wardshyp of hym, and the reason of it is, because the kyng hath the wardship of the temporalties, by reason whereof this wardshyp commeth, whych temporalties the kyng hath in ward by

the

the order of the common law, in iure corone: For they bee barronies, which can bee holden of none other then of the kinge in capite, and then by the common lawe, (take it he were no better then a common person) yet his highnes must haue the wardshippe of them that holde of those temporalties by knightes seruice if they falle duringe the time the saied temporalties be in his hands, with such lands as they hold of those temporalties but not with such lands as they hold of other, and than must the heire therof when he commeth to his ful age sue a liuere as shal more plainly appeare when we come to the third chapiter of this prerogatiue. The woords of the statute before recited are, in dominico suo: this woorde demeane is not here taken to bee the verye possessiō or taking of the profits, for if the kinges tenaūt dye seased but of a reuercio or of a remaynder in landes holdin of a common person, and during the minoritye of his sonne the particuler tenaunt dyeth, the kynge (this notwithstanding) shall haue this land in ward as he hath the rest, as it may appeare. M.22. H.6.f.18. & M.15. E.4.f.12. So it is if the kinges tenaunt dye seased of an aduouson appendant to lands holden of a common person M.46. E.3 11. The woords be further, dic quo obierunt, & therfore if ỳ kings tenaunt dye seased, of Landes holden of a common person & a straunger abateth, yet ỳ heyre shalbe in ward, and the kynge may enter, and so is it if the heire recouer by assise of mordaūcestre, as it appeareth in the newe Natura breuium fol.257.f. Liuere 28. T.12. K.2. But take the case to be ỳ the kings tenaunt dye not seased but is disseised & dyethe, whether in this case the kynge maye haue prerogatyue or not, and it seemeth that hee may, for in all such cases where the heire hath a right of entre, the kynge may enter in name of the heire and holde it afterwarde in warde. but yf the heire haue but a title of entre or right of accion it

semeth to bee otherwise, howbeit looke for those maters in the saide booke of M.15. E.4.f.13. & T.12. H. 7.f.20 & 18. lib. ass. P.18. where it is adiudged that of landes holden of the kynge in chiefe, ỳ kynge as in ryghte of his warde myghte seaſe by a Scire facias vppon a tytle of entre. And note also ỳ there is somewhat more to bee vnderstanden heare then is written or expressed, that is to saye, ỳ ỳ saide Lãdes must discende to ỳ kynges warde, for notwẽstandynge ỳ kynges tenãt wear seased in his demeane as of fee daye of his death in landes holden of a commen persone, yet if the same after hys death doo not discende to the kynges warde, but to an other heire, the kynge shall not haue prerogatiue in them as it appeareth in M.12. Ed.4. fo.18. The woords of ỳ statut bee also De quocunque tenuerunt. Put case the kinges tenaunte is seased of certayne thynges whyche neyther are holden of the kynge nor yet of any other, whether shall the kyng haue them in warde or not, as Market, warren, Kent Seck, or aduowson en grosse: & as it should appeare in H.3. H.7.f.4. P.46. E.3.f.12. & M.21. H.6.f.11. ỳ kyng cannot haue thẽ in warde & yet in M. 15. Ed. 4. f.14. some holde oppiniõ to ỳ cõtrary, therefore inquere & learne what ỳ law wil in these cases. The woords of the statut bee, Per huiusmodi seruiciũ, ỳ is to say, by lyke seruice. By these woords the landes ý are holdẽ of other must bee holden also by knights seruice or els the statute extendes not to thẽ, & yet the law is taken to ỳ contrary, for yf the lands holden of other bee holden but in socage or free burgage, the king shall haue prerogatiue in them as it appeareth in P.24. E.3.f.47. for this statute is but a confirmacion of the common law, and therefore shalbee taken by equities & namely when the law was so taken in Prerogatiue 25. T.9. H.3. which was longe time before the makynge of this statut.

Howbee

Holwbeit Bractō.Li.1.de cuſtod' et releuiis.& Brittō Li.3 C.2. doth ertēde this p̄rogatiue no further thē to lāds holdē of other by knightes ſeruice,therefoze ēquire foz ẏ cauſe & reaſō thereof. The woozdes bee further, Exceptis feodis archiepi. Cantuar' &c. This exception extendes not to ẏ body,wherfoze the kynge ſhall holde that in ward againſte al mē,but it extendes to ſuch landes as are holden of theſe perſons exempted by this ſtatut. Put caſe then that any of theſe perſones pourchace a ſeignozy ſince the tyme of the makynge of this ſtatute,ſhall the kynge haue hys p̄zerogatiue in the landes holdē of that ſeignozie oz not? And it is clere he ſhal notwithſtandinge the afozeſayde woozdes of exceptyon: foz they doo not extende but to ſuche fees as weare theyrs at the time of the makynge of this ſtatut. Then further,foz aſmuche as there bee diuers ſtatutes concernynge wardeſhippe made aſwell beefoze as ſince the time of king Edwarde the ſeconde,let vs ſee whether this p̄zerogatiue wyl extende to thoſe ſtatutes oz not,and it ſeemeth it dooth,foz aſmuch as this p̄zerogatiue hath beene euer from the beginninge as I haue ſaide befoze: And therefoze if the kynges tenaunt being ſeaſed of landes holden of a common parſon maketh a feffement therof by colluſiō contrary to ẏ ſtatut of Marlebridge C.6.to defraude the lozde of ẏ wardſhippe and dyeth,the king hauing his heire in warde & this matter founde by office ſhall ſeaſe vpon a Scire facias if the colluſion bee auerable,oz wout a Scire facias,if the colluſiō be apparaunt & hold the ſame in warde by foze of this p̄zerogatiue & ẏ appeareth in. T.9.H.4.f.6. So likewiſe wher the ſtatute made in 4.H.7.C.17.p̄ouideth ẏ the heire ceſti que vſe ſhalbe in warde. Put caſe that the kynges tenant in capite befoze the ſtatute in Anno.27.H.8.had made a feffement of lands which hee holdeth of a common perſon to the vſe of hymſelfe & his heires and died befoze that ſtatute,

in this case the kyng should haue had his prerogatyue in the lands so beynge put in feoffament to an vse euen as if his tenãt had died seased therof, as it appereth T.12 H.7.fo. 19. Than last of all let vs learne how the lordes whose fees the kynge hath in warde by his prerogatiue shal bee demened and ordered for the rentes to bee dewe for their seignories duringe the wardshippe whether they shall leese thẽ as they doo the landes. And it appeareth 29. li.ass.p.5. that they had them by petition at the kynges hands, and therwith agreeth thoppinion of Hill' in H.24. E.3. fo.24. and the new Natura breuium fo.158. Learne the reason of these bookes, for it should seeme to mee ẏ law to bee otherwise, because that al mesne seignories are suspended duringe ẏ time the king hath the tenancy in ward, if it be not percase for the surplusage of a rent seruice which the mesne may sue for to the kynge by way of petition. And to say as H.26. H.8.f.10. that the heire shalbe charged at his full age with ẏ said rents it were not reason, for then both his land should bee in warde, and yet he charged to pay rent for the same: wherfore it seemeth that these bookes are against the law. And with me agreeth Bracton in his first booke in the chapter de custodia where hee saieth, Et cum tali ratione sint aliorum feoda in manu domini regis, pred' ratione alii capitales domini feod'illorum nihil poterint exigere de terris et tenẽtis illis nec in seruic. nominat' nec in auxiliis ad filiã matitandam vel filium primogenit' militẽ faciẽdũ vel in sectis quãdiu terre fuerint in manu domini regis, sed precipiet' vic' qd' hmodi distingere non pmittat. Howbeit Bracton in his sayde booke in the chapiter, De releuiis saieth, that the heire at his ful age shal pay his relief to euery of his lordes notwstãding he hath been in ward, quod nota: for i al other cases he neuer paieth relief, ẏ is to say wher he hath been in ward, & hee maketh no other reasõ for it but this.s. qd' hoc

eſt ſpeciale in rege propter ſuum priuilegium: and ſo ys the booke in the.24. yere of kyng Edward the third. fo.14. and the.39. yere of the ſame king, Relief.7. Holwbett Brittons opinion. li.3. c.2. is that the heire ſhal pay no relief to the other lords after hee hath been in the kings ward, & cõmeth to his full age, and I cannot fynd that the heir in any ſuch caſe ſhoold or dooth pay any reliefe to the king that is to ſay where hee hath been in ward: therefore learn what erperience teacheth vs in theſe caſes. Voyes leſtatut fait an. 2. E.6. c.8. en Raſtals collection. Eſchetors.15.

LeRoy auera le mariage de cheſcun'queux terres il auoit en gard. Cap.2.

ITem Rex habebit maritagium hered' infra etatẽ & in cuſtodia ſua exiſtẽ ſiue terre & hered' eorundẽ ſint ab antiquo de corona ſiue de eſchaetis quę ſunt in manu domini Regis ſiue habuerit maritagium ratione cuſtod' terrarum dñorum eorundem hered' nullo habito reſpectu ad prior' feoffamenti licet dealiis tenuerunt.

All that is contained in this Chapter was the kings prerogatiue by the order of the common law, as it may appere in the bookes of Bracton. li.1. ti. de herede Sockman in cuius cuſtodia eſſe debeat. and Btitton. li.3. ca.2. and in a book M. 24.E.3. f.31. &.65. Where it is ſaid ỹ no lord can bee more auncienter then the king, for all was in him and came frõ him at the beginning. And therefore his highneſſe muſt haue prerogatiue in the body of whoſoener the infaunt holdeth beſydes, bee it that the lands are holden of the kinges highnes as of the auncientnes of the Coron or of hys new eſchetes, or come vnto him as ward by reaſõ of wardſhip. T.12. H.4. f.18. or ỹ his highnes doo purchaſe ỹ ſeygnory of him that is Lord by poſteriority, or pourchaceth a manor holden of one of his honors, which are of his new eſchetes, of which maner thaunceſter of thinfaunt held by poſteriority; in all theſe caſes the king ſhalbee preferred

to the wardshyppe of the bodye and mariage before any other lord of whom the auncester also held the day of hys death by priority of feoffement, that is to say, more auncient feoffement: how bee it in these cases his highnesse shall not haue wardshyppe in the lands holden of thother lords, beecause his tenaunt held not of him in chief, but onely shall haue preferrement in the body and mariage beefore all other. Then since the common law and statut dooth geeue the king this prerogatiue, let vs see whether his highnesse may by graunting away his seignory to an other, graunt also with the same his prerogatiue to the grauntee, that is to say, whether his grauntee shall haue the same prerogatiue in the body of the chylde as his highnesse might haue hadde, in case the seignorie hadde styll continued in hym. And it appeareth in Prerogatiue. 23. H. 12. E. 3. & H. 14. H. 4. fol. 9. ỳ if the kyng graunt the seignory to an other in fee simple that the grauntee shall haue no prerogatiue, beecause there remayneth nothing in ỳ kyng of that seignorie vngraunted. But if the graunt weare made to a common person for no longer time then duryng his lyfe, and the reuersion saued to the king, then learn what the law will in that case, for wee haue in H. 5. E. 3. fol. 4. that where the graunt was made to the Queene for terme of her life the reuersion in the kyng that her grace hadde prerogatiue euen as the kyng hymself should haue hadde, and for none other reason there made but onely beecause shee held in ryght of the king. But a man may adde further to that reason and say that her grace is a common person bee not lyke, for though shee bee a person exempt from the kyng and maye sue and bee sued in her own name, yet that that shee hath is the kyngs, and looke what shee loseth so much departeth from the kyng,

and

and therefore all her tenauntes of parcell of her estate may haue ayde immediatlye of the kynge wythout makynge her party or priuy thereunto, and so shee holdethe merelye in the kynges ryghte: but a common persone doothe not so. For the kynge hathe nothinge to doo wyth the thing that hee holdethe durynge the lyfe of the lessee, howbeeit yf the graunt bee made to the Queene for terme of her lyfe the remaynder ouer in fee yt seemethe that her grace getteth no prerogatiue, and so yt is sayde in M. twēty fowre. E. 3. folio. threescore fyue Lyke lawe is it if the kynge graunt an honor to the Lorde prince and his heyres kyngs of Englande, it seemethe by the better oppinion in M. 21. Edward. 3. fol. 41. that the Lorde prince shall haue therwith the kynges prerogatiue, beecause it is not seuered from the crowne after the fourme as it is geeuen, for none shallbee inheritoure thereof but kynges of this realme. And note well that notwithstandinge the lawe weare so that none in this case but the Queene or prince myght haue the kinges prerogatiue yet if the kynge hauinge the seignory in hys handes after that the warde dooth fall graunt the same warde ouer, the grauntee shall haue and enioy the preferrement of the maryage agaynst the other Lordes euen as the kynge shoulde hymselfe, beecause that notwythstandynge anye suche graunt, yet the kynge is sayde styll gardeyne and the infaunt dryuen to sue for hys lyuerye at the kynges handes whenne hee commethe to hys full age, and not at the handes of the grauntee, whych in this case is but onely as a committee. And so is the booke in T. twelue. H. 4. 25. Lyke lawe is it in the case aboue remembred whearе thee Queene hath prerogatiue and the warde falleth and shee graunteth her wardeshippe ouer, her grauntee shall haue preferrement in the mariage before al other lordes. And that also appearеth in H. 5. E. thyrd. fo. 4.

howebeit that case was enforced by that ỹ the kinge confirmed the state of the graũtee, like law is it yf the kynge haue a warde of right of his corone, and graunteth it ouer with special wordes, that is to say, ỹ the sayd graũtee shal also haue warde by reason of wardeshippe yf it fall during ỹ minority of the first ward, in this case if there fal a ward which holdeth by posteriority of the heire that is in warde, yet that notwithstandynge the said grauntee shall haue the preferment in the warde of the body and mariage, euen as the kinge him selfe should haue had if hee had made no such graũt, because it is meerely in ỹ kynges right which remayneth ful lorde, and the grauntee none other but as it were his comyttee: and this appeareth also in the. 12. yeare of king Henry the fowerth. fo. 25.

Le Roy auera primer seisin de touts lesterres, dount son tenãt en chief fuit seisie en fee. Cap. iii.

ITem Rex habebit priman seisinam post mortem eorũ qui de eo tenẽt in capite de omnibus terris et tenementis de quibus ipsi fuerũt seisiti in dominico suo vt de feodo cuiuscunque etatis heredes eorũ fuerint capiend' exitus eorundẽ terrarum & tenemẽtorũ donec facta fuerit inquisitio prout moris est et ceperit homagium huiusmodi hered'.

In the. 52. yeare of kynge Henry the thirde longe time beefore the makynge hereof was there an other statuts made at Marlebridge concerning this matter: In the. 16. chapiter whereof it is thus prouided. De hereditate autem que de dño rege tenetur in capite sic obseruãd' est, vt dominus Rex primam habeat inde seisinam sicut prius inde habere consueuit, nec heres nec alius in hereditatem illam se intrudat, priusquam illam de manibus domini regis recipiet prout huiusmodi hereditas de manibus ipsius et antecessorum suorum

recipi

recipi consueuerit, et hoc intelligatur de terris et feod' q̃ racione seruicij militaris, socagij vel seriantię seu iure patronatus in manibus domini regis esse consueuerunt. Both these statuts declare themselues to bee of none other force thē as a confirmacion of that, that was the kings prerogatiue by the order of the common law, as it may appeare by these woords, prout moris est, sicut prius habere consueuit, recipi consueuerit, esse consueuerunt. And therewith agreeth also Britton fol. 17. The woords of the statut bee, Rex habebit primam seisinam. what prima seisina is, it is declared by the woords that follow. s. capiendo omnes exitus &c. by which woords may appeare the king shal not onely seise, but also receaue the hole profyts till liuery bee sued, whych suyt most commonly hath been and is, wythyn the yeare and day nert after the death of hys tenaunt, and therefore the kyng vseth to take no more then the fyrst fruyts, that is to say one yeares profyts yf there bee not apparaunt default in the heire that bee will not sue his liuery, in whyche case then the kyngs highnesse shalbee aunswered of all the profyts taken till liuery bee sued or at the least tendred and after pursued with effect, yea and if it bee a general liuery and not rightfully pursued accordyng to the order of the law, the kyng shall reseyse and bee aunswered of all the mean profyts from tyme of suyng of the sayd liuery, for when the liuery is myssued it is as it had beene neuer sued. Howbeit thys reseisure shall not bee wythout a Scire facias, as I shall thereof speak more at large hereafter. But if the heyr or hee that should sue liuerye doo make a ryghtfull suyte for the same according to the order of the lawe, and asmuche as in hym lyethe to doo to haue liuery, howbeeit the kyng will not but willbee aduised ere hee make hym liuery and so protract the tyme, in this case hys highnesse of ryght maye not haue the profyts from the

time

two kinds of liuery generall and speciall

time the party was thus delayd, but ought to restore them vnto the party vppon his liuery, as may appere in H.1.H. 7.fo.28. And thereuppon it is to bee noted that there bee two kynd of Liueries, the one generall, the other speciall. The generall is the liuery that this statut speaketh of, the especiall may bee more properly treated of, when wee come to ỹ thirteenth chapiter of this prerogatiue. And this generall liuery is sometime made cum exitibus, and sometimes sine exitibus, but for the most part sine exitibus: For where it is made cum exitibus, from the tyme of the seysure, there it is properly no liuery, for it appeareth the king neuer seised rightfully or by any tytle. As for exaumple, if the kyng will seise the land that is found in thoffice to bee holden of Tharchbyshopp of Caunterbury or Bishopp of Durham or any such persons as are exempted in the first chapiter of this prerogatiue, in thys case they shall haue an Ouster le main vna cum exitibus, as it appeareth in. li. 16.E.3.p.29. The same is it, if of lands holden in Capite there bee a lease made for terme of lyfe, the remainder ouer to estraunger, tenaunt for terme of lyfe dyeth and this matter found by office, now if the kyng seise, hee in the remainder shall haue an Ouster le main vna cum exitibus as it appeareth in. H.14. H.4.f.32. P.18.E.3.f.21. T.24.E. 3.f.29. Like law it is where ii. hold iointly of the king and the one dyeth and this matter found by office, and yet that notwithstanding the kyng seises, hee that surviues shall haue an Ouster le main vna cum exitibus, as it appeareth 44.ass.p.36. and in the new Natura breuium.fo.256.&.257. For in all these cases where the Ouster le main is vna cum exitibus the kyng ought not to haue seised, and so saith Thorp T.45.E.3.f.18. The woords of the statut ebe further, Post mortem eorum qui de eo tenent. Upon this: it is to bee seene at what tyme after the kynges tenaunts

death

death this liuery shalbee sued. If the possession of the free hold immediatly after the death of the kyngs tenaunt discend vnto his heire it is to bee sued foorthwith, and if but only a reuertion discend, then yt is not to bee sued tyl after the death of the particuler tenaunt, as it may appeere Natura breuium.f.258. where the heire sued not liuery tyll after the death of the tenaunt by the curtesy, tenaunt in dower, and tenaunt for terme of lyfe. But learne what the law should haue been if the kyngs tenaunt hadd dyed seised of a reuersion whereuppon rent had been reserued, his heire of full age, whether hee should haue then sued liuery foorthwith, or els to haue taried tyll the death of the particuler tenaunt for in .9.7. H.6. folio.3. Iune thinkes hee should tary or els yt myght follow the kyng should haue double liuery that is to say one for the rent an other for the land, but Paston is in contrary oppinion, and resembles it to a reuersion dependyng vppon an estate tayle wyth a rent reserued, howbeit at this day there is election geeuen vnto the heir, that is to say eyther to sue his liuery immediatly after the death of his auncester in the life of these particuler tenaunts, or els to tarry vntill they dye, and if hee sue his liuerie in their lyfe hee payeth for primer seisin but the moity of one yeares profit, and if after their death then hee payeth the whole yeres profit, howbeeit if there bee a rent reserued and hee pursueth his liuery in the lyfe of the particuler tenaunt, it seemes besides ỹ half yeres profit of ỹ value of the land hee shall also pay ỹ whole yeres profit of ỹ rent reserued, therfore learn what common experience teacheth vs in that case. The woords of ỹ statut be, Qui de eo tenent in capite. By these woords hee must hold of the kyng in chiefe, for if hee hold not of him in chiefe the king can haue no primer seisin. And yet you shall see in the new Natura breuium.fo.163. that of lands in the city of London holden of the kyng in burgage

the

the king had primer seisin, & the heir therof sued his liuery, but ỹ president seemes to bee against the law, for Markhā sayeth in H.7.E.4.fo.17. that in Neuels case it was foūd that ones father dyed seised of certayn land that hee held of the kyng in Burgage, & thereupon thereto' did seise, which seiser by thaduise of all the Iustices was discharged by a Supersedeas awarded to thereto', for the woo'ds of both the afo'esayd statuts bee very plaine therein, that ys to say that hee must hold of the kyng in capite, but whether hee hold of the kyng by knyghts seruice o' by Socage in capite it maketh no matter so that hee hold in capite, for the king in both cases shal haue p'imer seisin although not with so large a p'erogatiue in the one case as in the other. For in the first case where the tenure is knights seruice in capite the king shall haue the same p'erogatyue when the heire is of full age at ỹ death of his aunceſter as hee should haue hadde if hee hadde beene within age, that is to say p'imer seisin aswell in the lands holden of others as of hym selfe, bee it that the lands holden of other bee holden by knyghtes seruice o' in Socage. But otherwyse it ys where the tenure is but a tenure by Socage in capite, for there the kyng shall haue no p'imer seisin in lands holden of other, namely yf they bee holden of other by knyghts seruice, as it appeareth playnly by the statut of Magna charta capitulo.27. and in the new Natura breuium.folio 256. no' yet any p'imer seisin of lands holden of hymselfe in Socage in capite: If the heire at the death of his aunceſter bee not of the age of fowerteen yeares, as appeareth H. 35.H.6.fo.52. T.45.E.3. fo. 19. and also in the new Natura breuium.fo.356.& fo.259. But in euery of these cases they to whom the body belongeth shall haue an Ouster le mayn of the lands vna cum exitibus that ys to say the lo'des of whom the land is so holdē by knights seruice in thone case,

and

and the Prochein amy in the other case. But wher the landes bee holden of the kynge in Socage in capite, & the heire of the age of 14. yeares at the death of his auncestor, there the kyng shal haue primier seisin and the heir driuen to sue liuerye, for there is no person that can make anye title to the heire or his landes but onely the kynge, and therefore the king must haue his primier seisin, & the heire driuē to sue his liuerie by expresse woords of the forsaid statute of Marlebridge, & so it semeth also in that case ỹ his highnes shal haue primier seisin in lāds holden of other, so they be holden but in Socage, for the reason aboue remembred. Tamē quere. The woordes of the statute bee farther, de omnibus terris et tenementis de quibus ipsi seisiti fuerunt in dominico suo vt de feodo. These woords may bee cōferred and coupled with the first chapiter of this statute of prerogatiue which hath the very selfe same words. And therefore looke in what cases noted, vppon the first chapiter the king hath his prerogatiue by reason of wardship, In all the same cases shall his highnes haue prerogatiue by reason of primer seisin if the heire weare of full age at the death of his auncestor. Wherfore to reherce thē here particularly it were but superfluous, except it bee in the case only of collusion geuen by the statute of Marlebridge c. 6. where the heire is within age, because it speaketh nothinge of the heire ỹ is of full age. And therefore in that case it seemes the kyng cannot haue lyke benefyte of primier seisin as hee hathe of wardeshippe, when the heire is wythin age. Howbeit there is a booke in that poynte lefte at large which is M. 17. E. 3. f. 63. M. 7. E. 3. Relief. 12. et Collusion 29. P. 31. E. 3. and there the case was. The tenaunt enfeffed his sonne and heyre and dyeth before the feffee gaue notice thereof to the lorde. Ideo quere. The woordes of the statute bee farther, Cuiuscunque etatis heredes ipsorum fuerint. To these woords also shall the firste chapiter of this estatute

haue

haue relacion, for they plainly declare that if the heire were within age at the death of his auncestor, the kyng shal haue primer seisin and the heire driuen to sue his lyuery, notwithstandinge also the kynge hath had the wardshippe of hym. For the woordes bee generally spoken and may be extended aswell where hee was within age at the deathe of his auncestor, as where hee was of full age. And so hath it beene euer vsed, sauinge that where hee hath been in ward hee payeth but one halfe yeares profite for primer seisin, and in the other case hee payeth the hole. The woordes of the statute bee farther, capiendo omnes exitus eorundem terrarum & tenemẽtorum, donec facta fueri inquisitio prout moris est et ceperit homagium hered'. By these woordes it maye appeare that the kynge after the deathe of hys tenaunt and before any office founde, might seise the landes and take the profites, which thinge surely is true, as plainelye is proued by the writte of Diem clausit extremum which hath these woordes Cape in manum nostram omnia terras et tenementa &c. donec aliud inde preceperimus et per sacrum proborum hominum diligenter inquiras &c. So the seiser goethe before the inquisition, howbeit since the statut made at Lincolne Anno. 29. E. 1. called statutũ de Escaetoribus it is not vsed to seise tyll office bee founde, and then the kinge to bee aunswered of all the profites since his tenãts decease, which commeth all to one effect. And yett that statute doth not restraine the seiser, but that therchear may seise at this day without office. By the aforesaid statute of Marlebridge cap. 16. it is ordeined and playnely set foorth of what lands and fees the kinge shall haue primer seisin, for these bee the woordes. Et hoc intelligatur de terris & feodis que ratione seruicii militaris, socagii, vel seriãcię siue iure patronatus in manibus domini regis esse cõsueuerunt. By these woordes it may appeare that hee that

is wards

is warde because of wardshippe shall not sue liuerye, or where one holdeth of the kynges warde by knyghtes seruice or in Socage and dyeth his heyre of full age the kyng shall haue primer seisin of the landes, that are so holden of his warde, and the sayde seconde heire dyuen to doo hys homage or fealtye as the case shall require to the kynge, and also to paye hys relefe vnto hym and to sue liuerye of the sayde landes as it appearethe hee dyd in the newe Natura breuium fol. 61. & 62. For it is within the compas of these woordes, que ratione seruitii militaris. So ys it yf the kynge haue a Bishoppes temporaltyes in his hands duryng the tyme that the See is vacant, and one ỹ holdeth of that temporalties by knights seruice or in Socage dyeth his heire within age, in this case, after that the kyng hath hadde the wardeshippe, the heire at his full age shall paye primer seisin and sue hys liuery. And so shall hee doo yf hee bee of full age at the tyme of the death of hys auncestor, for the woordes of the statute bee, De feodis quę iure patronatus in manibus domini regis esse consueuer', and there with agreeth the newe Natura breuium folio. 254. But learne yf the kyngs tenant in chiefe dye, his heire of ful age and one that holdeth of the heire beefore hee hath sued hys liuery dyeth, his heire also beynge of full age, whether in thys case the kynge shall haue primer seisin of the landes of the seconde heire or no, as hee should haue hadde yf the heyre of his tenaunt had beene within age, & in the kings warde at the time when this second heire did fall, & it seemeth to mee hee shal, for ỹ reaſõ made afore. Then last of al whether this progatiue extẽde to any statute made since ỹ time of kyng Ed. 2. & it seemes it dooth, & that for ỹ reaſõ noted in ỹ first chapiter, fo. 9. as ỹ feoffets of Cestuy que vse

& if vñ warde shall not sue liuerie

before

before the statut made in ỹ.27.yere of kyng H.8.vsed to sue an Ouster le mayn sine exitibus, which was in nature of a liuere for ỹ heire of cestuy que vse which had bene in ward. Item for asmuche as there bee exceptions in the first chapiter and none in this, whether theye also bee comprised within this chapiter or not: and me seemes they bee, because these.ii.chapiters must concurre together and agree in euery thing. And if the heire bee within age at the death of his auncester, the Archebyshoppe of Caunterburye shal haue an Ouster le mayn vna cum exitibus, so that the heyre shall not sue lyuere of that, & then by the same reason yf hee bee of ful age at time of the death of his auncester, for the lyuere in the one case and the other is geeuen by this chapiter as mee semeth, Tamen quere.

Le Roy auera lendowment & mariage de ses veufs et femmes. Cap.iiii.

ITem assignabit viduis post mortem virorum suorum qui de eo tenuerint in capite dotem suam quę eas contingit &c. licet heredes fuerint plenę etatis si viduę ille voluerint, & viduę illæ ante assignationem dotis suæ predictæ siue heredes plenæ etatis fuerint siue infra etatem iurabunt qd'se non maritabunt sine licētia regis. Et si se maritauerint sine licentia regis tūc rex capiet in manum suam nomine districtionis omnes terras et tenementa quę de eo tenentur in dotem donec satisfecerint ad voluntatem suam ita qd' ipsa mulier nihil capiet de exit' &c. quia per huiusmodi districtiones huiusmodi mulieres seu viri eorum finem faciant regi ad voluntatem suam, et illa voluntas tempore regis H. patris regis E. estimari consueuit ad valenc. predictę dotis per vnum annū ad plus nisi vberiorem gratiam habuerint. Mulieres quę de rege tenent in capite aliquā hereditatem iurabūt similiter cuiuscunque fuerint etatis quod se non maritabunt

sine

sine licentia regis, et si fecerint terre et tenementa ipsarum eodem modo capiantur in manum domini regis quousque satisfecerint ad voluntatem regis.

This statut likewise dooth but confirm the common law before as it appeareth by the statut of Magna charta cap.7. which was first made in the time of king H.the third, whiche is, qd' nulla vidua distringatur ad se maritandum, ita tamen, qd' securitatem faciet qd' se non maritabit sine assensu nostro, si de nobis tenuerit. And also in the.24. H.3. Prerogatiue.27. It is sayd, that when the kings tenant dieth and his wife endowed, shee cannot mary without the kings licence, & if shee doo, shee & her husband shall make syne. Therpositiō. It should appeare by the woords ỹ the wifes of al them that hold in Capite can not haue dower at any mans hands but onely the kings if his grace will, for in ỹ his grace hath a prerogatiue aboue al common persons alwell for that shee shal thereby hold of his highnes in chief, as for that shee shall not marie without licence: for so shee might bee maried vnto the kings enemie, and thereby the strength of the crowne enfebled. Therefore it is prouyded that his highnes may assigne the dower whether the heire bee of full age or within age, to thentent that shee before the receiuing thereof shall take a corporal othe not to mary wout ỹ kings licēs. The maner of the assignemēt whether the heire bee of ful age or within age is very well set foorth in the new Natura breuium fo.263. in ỹ writ de dote assignanda. Howbeit for that some things are there noted which seeme to repugne with our booke cases, I purpose to cōferre the one with thother and see how they can agree. In the said Natura breuium it appeareth that notwithstāding the king had cōmitted ỹ land ouer to another, yet ỹ womā sued in the Chācery to the king for her dower & not to the cōmittee, & in our bookes you shal see many writs brought against the comittee, yea & in some of thē ỹ shee recouered her dower and the king not made party to the same, as the

booke is i H.4.H.7.fo.1.which is more at large.Aid de roy 33.where ỹ writ of Dower was brought againſt ỹ kings cõ mittee,who pleaded in barre wõut prayng in ayd of the king,& the barre was found againſt him,& notwithſtãding ỹ it did appeare vnto the iuſtices ỹ the king might be touched therby,yet woold they not ſurceſſe but awarded ỹ the demãdãt ſhoold recouer & tooke for their cauſe the ſtatut of Bigamis A.4.E.1.ca.3.which ſayeth in this maner.De dotibus mulierum vbi aliqui cuſtodes hereditatis maritorũ ſuorũ cuſtodias habent ex dono vel cõceſſione regis,Siue cuſtodes rẽ petitã teneãt ſiue heredes dictorũ tenemẽtorũ vocentur ad warrantũ ſi excipiant quod ſine rege reſpondere non poſſint,nõ ideo Superſedeatur quin in loquela predicta prout iuſtũ fuerit ꝓcedatur. This Natura breuium & thys booke of.4.H.7.ſeeme not to agree.For where takes ſhee any oth where ſhe recouers by a writ of dower in ỹ cõmõ place:which othe ſhee muſt needes haue taken if ſhee had ſued in the chãcery,or how may the committee endow her. whẽ percaſe he will endow her of more then ſhee ought to haue or endow her where ſhe is not dowable by the law: whereunto one may aunſwer in this wiſe, that his wrõgful endowment ſhal not conclude the king,but ỹ his grace may reſourm the thing when hee wil, & ſins he hath committed al his intereſt ouer Durante minore etate,his grace may permit thendowment made by the committee if it bee rightfully made to ſtand: & ſpecially becauſe of the ſtatut of Bigamis which allows it ſo to be. Ans notwõſtanding ſhee take no othe, yet can ſhee not mary without the kings lycens,for this endowmẽt by ỹ cõmittee is the kings ẽdowmẽt vpõ the matter,for ỹ that he holdeth in right of ỹ king which cõtinues ſtil gardein notwithſtãding any ſuch commiſſiõ or grãt of the wardſhip. Therefore it ſhoold ſeeme ỹ after the ward cõmitted ouer(as is aforeſayd) it is at the electiõ of the woman whether ſhe will ſue to the king in the chancery or at the cõmon law againſt the committee: But if the king doo but commyt the ward ouer Durante bene

placito

Placito otherwise it is, for there she must sue ōly to ẏ king, as appeareth in Dovver.169.8. E.2. And note wel ẏ thys statut of Bigamis before recited wil also ẏ if ẏ heir of ẏ husbād be vouched to warrāty being in ẏ custody of those committees ẏ the Justices shal not surcesse no more thē when ẏ writ of Dower is brought against ẏ cōmittee. Cōtrary to this brauch of the said statut are there diuers bookes, as M. 18. E.3. f.38. H.8. E.3.15. & Ayd de roy.64. H.19. E.3. where the said cōmittee cāe in, ẏ heir beig vouched in their ward & shewed how they held of ẏ kigs lease & praid in aid of ẏ kig & had it: wherat I doo not a litle maruel because of this statut of Bigamis which was neuer spoken of ne yet remēbred in these bookes, their iudgemēts as yt shoold seeme beeing directly againſt this statut, Howbeit ẏ maner of ẏ lease doth not there certeinly appeare, ẏ is to say, whether the wardship were grāted Duráte bene placito or Duráte minore etate, for ẏ woold make a differēs as I haue said before. Also ẏ booke is P.39. E.3. fo.8. wherin a writ of Dovver brought against ẏ cōmittee of ẏ cōmittee there was aid grāted of ẏ king, but ẏ seemes to bee out of ẏ cōpas of the statut of Bigamis which speaks only of thē ẏ haue it of ẏ kings grāt, & so hath not ẏ secōd cōmittee, therfore learn what the law wil in these cases. But if ẏ wardship be comitted to ẏ wife wout any exceptiō or forprise of her dower, she by ẏ is cōcluded to claym any dower during ẏ said wardship, as yt may apere in P.2. H.4. f.7. i ẏ said new Natura breuiū f.264. D. It is also said ẏ where liuery is made to ẏ heir before ẏ womā sue for her dower in the Chācery, & in ẏ said liuery ther is no sauing made for her dower, ẏ thē she must pursue her writ of dower against ẏ heir: & the reason ẏ is there made is, because the king hath made liuery generally without any reseruation of Dovver to bee assigned by his highnes: whereunto I aunswer, that when liuery is sued before assignement of dower, there is most commonly in the writs of liuery a sauing made for her dower if it so be ẏ she were found the kings tenaunts wife in thoffice, and shee beeing

so found if the heire sue a generall liuery lemyng out these woords Salua dote or retenta dote &c. it is a good cause for ỹ king to release the whole, for the liuery is nulled in ỹ case, & that I learned of iustice Spilman which noted it so in 11. of H. 8. but if she bee not found wife in the office, the heire may sue his liuery without any such sauing & to say that ỹ king by making such a liuery should waiue the aduauntage of his prerogatiue in the dower: that seemes not to be trew vnles the sayd waiuer were by expres woords, wher fore it seemes the heir in that case after liuery is not bound to yeld vnto her dower, but her onely remedy is to sue for the same to the king, & that must be first vpõ an office (as I think) finding that shee was his tenants wife, Ideo quere, and learn whether she may haue dower in any case either in the chancery or by writ of Dower at the common law against the commitee or the heir, vnles she bee found wife first by office as is aforesaid, except it be in cases where the king wil refuse this prerogatiue. And note that like as the king hath a prerogatiue by this statut to yeld dower to the wife of his tenãt, so hath his highnes a prerogatiue by the common law to withhold dower from the wife of his tenant, which no common person hath. As put case in a writ of Dower the heir bee vouched in the kings ward, and the tenant shews for his line the feoffement with warraunty of the husband which is father to him that is vouched, yet that notwithstanding shee shal recouer her dower against the tenant & not against the heire, because that els the king should lose the wardship of the lãds where the womã may (without her losse) as well recouer her demand against the tenant as shee should against the king, and yet if the king were a cõmon person in that case hee should lose the ward shyp of so much as shee demaundeth. And this booke ys H. 26. E. 3. fo. 58. where it is sayd that the kyngs commitee of the wardshyp shal not haue the prerogatiue, & therewith agrees H. 8. E3. fo. 15. And note ỹ like as ỹ king hath

prero-

prerogatiue against the wyfe that bringeth ẏ writte of Dower, so shall hee haue prerogatiue against the tenaunt in the said writte of Dower: for notwithstanding that the tenaunt in ẏ self same case haue iudgemẽt to recouer ouer in valu, against ẏ heir which is in the kings ward, yet he shal haue no execution of that recouery till the land bee sued out of the kings hands. Howbeeit. 9.27.E.3.f.87. is contrary to the said booke of.26.E.3. ideo quere. And learne & enquire whether a woman being thus endowed at ẏ hãds of the feffee of her husband of such lãds as hee dyed not seised of & whereof the king at that tyme can haue no wardship, whether shee may mary or not without the kings lycence, & it seemes shee cannot for any woords compriſed wᵗ in this statut. And it appeareth in.26.li.ass.p.57. that wher a woman was endowed by gardein in chiualry and afterwards the garden committed treson whereby the seignory was forfet to the king, that after this forfeiture shee should hold of the king and not of the heir which was in the reuersion, in which case then shee cannot marry without lycẽce as mee thinketh. The further it is to bee seen to what lands the statut dooth extend vnto and to what not. It extends to lands holden in capite wherof any woman claymeth dower, as may appere by the woords of the same statute, and not to any other lands, for if the king haue in hys custody bishops temporalties during the tyme the Sea is vacant, & one that holdeth of those tẽporalties by knightes seruyce dyeth his heir beeing within age, wherby the king hath the wardship of his heir & endoweth his wife, in thys case shee shal make no oth but may mary without licence. Like law is it where shee is endowed of lands that are holden of him that is the kings highnesse ward by reason of a tenure in capite, for in both these cases the land wherof dower is demaunded are not holden of the king in chief, and this dooth appere in the newe Natura breuium fo.264.a. & yet in both those cases shee is endowed in the chancery, but

what is that to the purpose: for so shal the heir in those cases sue liuery of those lands, & yet they bee neuer the more for ỹ holden in chief, but only vsed for a solemnity because they were in the kings hands once by office, which is matter of record. The woords of the statute be further. Et si se maritauerint sine licentia regis tunc rex capiet in manũ suã nomine districtionis oẽs terras & teñta quę de eo tenent in dotẽ. &c. These woords bee knitt in a copulatiue to the former woords contained within this chapter, that is to say, where she hath demanded dower & is sworn not to mary, but if shee will neuer demand dower of the lands holden in Capite shee may mary where she wil: for the woords of the statut bee quod assignabit viduis dotẽ, si vidue ille voluerint, & so thinks Iustice Fitzherbert in his Natura breuium f.175. How be it by the book in.40.li.ass.36. it apeareth that the wife neuer demaunded dower & yet had allowaunce of it & did marry also without lycence & yet payd no fyne, & therefore the case was: The kings tenant in taile in chiefe made a feffement by lycence & tooke estate again to him & to his wife & dyed, the wife takes an other husband & dyes, after whose death the auncient estate taile being found by office, the lycence was holden void because the king was disceiued therein, & the second baron driuen to aunswer for the mean profits of two partes of the land but not for the third part, because shee was endowable quod nota. A woman tenant in dower of no mans assignemẽt, & some ther thought shee should forfeit her dower because she was party to the disceit. How beeit this case seemeth not to be properly within the compasse of this statute. Also Fitzherbert in the said Natura breuiũ.fo.174. thinketh that where the king hath vsed to graunt to other the maryage of his wydows that a cõposition with the grantee made for ỹ same (whether it be made by the wife or ỹ husband) is as good as if it were made with the king, yet cannot the grãtee in such case cõpell her to marry, for ỹ should bee contrary to ỹ

statut

ſtatut of Magna carta.c.7. which wil that ſhee ſhal not bee coſtrained to marry by diſtreſſe, but if ſhee will ſhee may liue ſole. Howbeit at this day by the ſtatut of 32.H.8.ca.46 the compoſition is geeuen to the maiſter of ẏ kings wards & liueries with.iii.of ẏ counſell of the ſaid court. And likewiſe auctority is geeuen to them wher the kings widows marry them ſelues without licẽce to take a reaſonable fine by their diſcrecions according to the ſtatut of Prerog. regis which ſtatut plainly ſetteth foorth what hath been vſed to bee doon in ſuch caſes, ẏ is to ſay, the value of her dower by one yere, & therewith agrees ẏ new Natura breuium. f.174. And for that fine the king ſhal ſeaſe all the landes & tenements ſo holden in dower as it apeeres by the letter of the ſtatut. Howbeit the Regiſter geeueth ẏ the king may ſeaſe aſwel the land of the huſband as of the wife, becauſe ẏ mariage is a wrong doon to the king but the ſtatut is cõtrary to that, and therefore Fitzherbert in the ſaid Natura breuium. f.174. thinks it to bee no law: For as well might the lands ẏ the woman hath of her inheritãce bee then ſeiſed, wherefore no other land ought to bee ſeiſed then that ſhee holdeth in dower, as it appeeres in the ſaid Natura breuiũ f.265.c. And lerne whether the woman obtaining dower at the hands of the comittee or of the heire of lands holden in Capite without making any othe may marry or not wout licence, & as mee ſeemeth ſhee cannot, for as ſoon as ſhee is endowed of thoſe lands ſhee is the kings tenaunt & not tenant to the heir which is in the reuertion: for if a treſpas be doon vpon ẏ land, ſhe ſhal haue a writ out of ẏ chancery ẏ one ſuch hath entred vpõ the kings poſſeſſion & the auowry to be made by the king reſteth only vpon her, & ſo is the oppinion of Wood in.P.1.H.7.f.17. And yet the reuerſion is in ẏ heire only, for if ſhee do waſt, the heire ſhal puniſhe her for it & not the king. Then further let vs ſee of what force this dower is when it is made in the chancery, & how ſhee ſhal bee admeaſured in the ſame if it bee to gret, for if it be to litle there is no remedy for her but to ſtãd to her own

harms if shee in the chaũcery once did accept it, not knowing whether shee were then within age or of ful age, as it may apere in T.18. E.3.f.29. The dowment in ỹ chaũcery is of this force, ỹ whether it bee by right or by wrong it cannot bee defeted by way of plea wõut a sute made in the chauncery for ỹ defeting therof, as it appereth in. M.17.E.3.f.71. ⁊ Dower 128. M.31.E.3. And therefore in a very strong case one dooth trauerse the office which is in the chauncery by reason the land is holden of him by knightes service ⁊ not of the king, ⁊ hath an ouster le main vna cũ exitibus: yet if shee were endowed before in the chancery vpon the office, her dower remaineth vndefeted notwithstanding this trauerse ⁊ ouster le main vntill an other suite bee made in the chaũcery for the defeting of the same. Howbeit in this case if the dower bee too much, the lord that tendeth ỹ trauerse may haue a writ of Admesurement at the common law ⁊ so cause it to bee admesured wõut suing to the king for the same. For it is no losse to his highnes though shee be admesured, seeing the land is not holden of him, as it appeereth Admesurement 4. T.7. R.2 ⁊ there it is agreed that ỹ heir shal haue a writ of Admesurement of assignemẽt of dower made by his auncestor, quere tamen. But the abatour shal not haue a writ of Admesurement nor garden en fait of assignement made by garden en droit, nor if the heire were of full age at the death of his ancestor ⁊ dyed his heire within age, the garden of his heir shall not haue a writ of Admesurement. But take the case to bee ỹ a woman is endowed in the chancery the rest of the land there remaining still in the kings hands, if it bee surmised by the heir or any other for the king ỹ the land assined to the wife is not extended to the very value, but ỹ it is more in value then it is extẽded for, now vpon this surmise there shalbe a new extẽt made, which beeing returned into the chancery a Scire facias shal be awarded against the womã, ⁊ if shee be warned ⁊ come not, or apeere ⁊ say nothing shee shalbee newly endowed,

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as it is said in Natura breuiū fo.265.b. Then let vs see farther at what tyme the woman may ask her dower in the chancery, & when shee is endowed & loses her dower vpon a recouery had against her by an eigne title how she shalbe recōpenced. If the husband haue land in dyuers countyes wherby after his death there bee awarded seueral writs of Diē clausit extremum into euery of those countics she shal not be endowed vntill such time as all ỹ said writs bee returned again into ỹ chancery, as it may appere in Liuerye 29. H.16. E.3. And note ỹ when shee is endowed in ỹ chancery & afterwards loses by a recouery vppon an eigne title, then shee hath none other remedy but to cause the record of the same recouery to bee remoued into the chancery, & vpō the first record whereby it appeared shee had dower & this other record of the recouery, she shal haue a Scire facias reciting both ỹ records against the tenant of the.ii. parts to reseise ỹ said ii. parts into ỹ kings hands & to be newly endowed of the same, but not to recouer any damages, notwstanding damages were recouered against her, & this appereth. 43. li. ass. p. 32. Now to the last branch of this statut, which is, that weomen ỹ hold of the king in chiefe any inheritance of what age so euer they bee shall likewise swere not to marry &c. By the order of the common law before ỹ making of this statute all weomen ỹ were within age & in ward should whē they came of full age, be maried by their lords euery one of thē with their portions, & if they were of ful age at the death of their ancestors, yet should they neuertheles bee in the lords keeping vntil they were maried by the aduise & disposition of their lords. For as Glanuill in his .7. book. c. 12. ỹ hee wrote in the tyme of k. H.2. saith, Sine dñorum dispositione vel assensu nulla mulier heres terre maritari potest de iure vel consuetudine regni, & therefore saith he if a mā haue issu one or moe doughters which bee his heirs aparant & marieth any of thē without the assent of his lord, ỹ bee thereby forfeits his enheritance by ỹ law

law and custome of the realme, so that hee shall neuer recouer yt again but only through his lords mercy, and that for this cause: For when the husband of such a womā shal doo his homage for the tenementes so holden by knightes seruice it is requisite to haue the lords wil & assent lest hee bee compelled to receiue homage of his mortall enemy or some other vnable personage, neuertheless if the tenaunt sue to his lord for licence to marry his daughter, the lord is bound to consent or els to shew cause why hee should not, & if hee will not, the woman may marry where shee listes without his assent. And the said Glanuil further saith, that Tenant in dower cannot in lyke wise marry without the assent of him that is her warrant, that is to say the heire: And if shee doo she shal lose her dower, & yet there the husbād shal doo no homage, but what then? he shal doo fealtie & for that cause also shee shal haue licēce. And further saith if she hold of diuerse lords it is sufficient for her to haue the assent of the chiefe lord. And hee saith ý women beeing in ward Si de corporibus suis forisfecerint: which woords as I vnderstand them bee if they comit fornication & that bee proued, then they that offend shalbee disherited, so that her portion then goes to the other sisters ý haue not in ý lyke offended: And if they all offend, then the lord shal haue the inheritaunce by way of eschete. Howbeit saith hee where they bee once maried by the lords assent & after becom widows they shalbee no more in ward, but yet if they marrye again they must haue his assent for the reasō before made. But then after they haue been once maried, they shall not forfeit their inheritance for their incōtinency, so that it apperes plainly here by Glanuill ý this whole statut of Pyerog. should bee but a confirmation of the comon law. And ý the law was so as Glanuill tooke it, it may partly apere by the said statut of Magna carta. ca. 7. For the woords are not only quod vidua securitatem faciet quod se non maritabit sine assensu nostro si de nobis tenuerit, but are also

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vel sine assensu domini sui si de alio tenuerit. And Bracton l.1 agrees also with Glanuill. Howbeit hee saith where a woman in the life of her auncesters marryes without the assent of the lord or where the widow marryes without the assent of her warrant, that the inheritaunce or the dower shal not now bee forfeted, although in old time it was. And farther saith that the heire in socage beeing a woman shalbee maried by the lord like as she should be if she were heire of lands holden by knights seruice. And farther saith that the heir male shalbe maried by ẏ lord more then once, that is to say, as often as hee shal beecome vnmaried in the time ẏ hee is vnder the age of.xxi.yeres. But now by ẏ statute of W.1.ca.22. the lords are abridged of their power in these mariages of the heirs females, for if they now be within the age of.xiiii.yeres at the death of their auncestor & the lord dooth not marry them before they come to.xvi.yeares, then shall they recouer theire heritage without any thing geeuen either for the ward or for the mariage. And if they maliciously or thorough euil counsell refuse to mary wher their lords doo appoint them without disparagement, then shal their lord hold their land vntil they come to the age of xxi.yeares & longer vntill they haue taken the value of the mariage. Out of this statut (if it bee wel considered) a man may gather that the comon law was no lesse then is heere recited. And this statute was made about the third yere of king E. the.1. a little before that Britton began to write his book: for Britton fo.169. saies that the mariages should bee offered to the heirs females before they accomplish ẏ age of xiiii.yeres, and if not, the lord shal lose his right in the said mariages. I suppose that the printer mistooke the nomber of the yeares & should haue printed sixteene where it is but fourteene, & therefore it is good to see other coppyes for this matter. And Britton also saith that if hee or shee haue been once marryed by the lorde or in the lyfe of theire father or

once

once agreed with their lord for their mariage, they shal ne uer again bee maried by him, but may mary them selues where they list, so that they hold nothing of the king. And fo.168. hee saith ý the king shall haue the mariage of all the heirs females where they hold of the king of what age so euer they bee as often as they shalbee to marry, so ý they cannot marry without the kings licence. Thus is the last clause of this chapter expressely proued by Britton that the comon law did still remain as it was for the mariage of ý heires females in the kinges case and not altered or abridged by the said estatute of West.primer, and therfore was the statute in the 39. yere of king Henry.6. the last chapter made in this wise. Item de auisamento, assensu et aucthoritate pred' ordinatum est & stabilitum quod mulieres existentes etatis. 14. annorum tempore mortis antecessorum suorum absque questione seu difficultate habeant liberationē terrarum & tenementorum suorum sibi descensorum quia sic lex istius terrę vult quod tunc ipsi haberent. Howbeyt this statute prouydes not where they be ẅin the age of. 14. yeres at the death of their auncestour, ideo quere. For as our late bookes goe since Brittons tyme the kyng hath lost hys prerogatiue, vppon what occasion I know not, but I woold gladly learne, for Fortescue sayes H. 35. H. 6. fo. 52. that when the heire female sues her liuery shee takes no oth that shee shall not marry as the kyngs wydow doth, and therefore sayth hee it shoolde seeme shee shoold make no fyne if shee marry wythout lycence. Howbeit Littleton sayes that if the heyre female bee of the age of. 15. yeres at the death of her auncestor and marry her selfe wythout lycence, that shee shall make a fyne, for it amounteth to an alienation. For after issue had the husband is become the kings tenaunt and hee soly shall doo homage in his owne name. And yet afterwards. H. 15. E. 4. f. 13. ý same Littletō says that the latter clause of the same statute is void, for ý

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daughter which is in ward marying her self to an other wō out licence shal not make fine to the king. Thus by the argument of the said boke of.35.H.6. it appeares ẏ they take ẏ king to be bound by the sayd statut of.W.1. & make hym no better then a comon person, wherat I haue no litle marueil sins he is not named in the said statut. For in the said boke H.35.H.6. Gard.P.71. it is agreed by ẏ court that if ẏ kyng after ẏ age of 14. years & before.16. doo mary ẏ heir female she shal haue liuery foorthwō vpō ẏ mariage, although she then be not of the age of.16. years because that shee was of ful age before as it is there sayd, ẏ is to say as soone as she was 14. And ẏ.ii. years ouer is but onely geeuen for ẏ mariage, which whē it is once had & the.14. yeres past the king or lord leese their interest. And so it was graunted ẏ if she were maried before the age of.14. & after her husband dyes before the said age whē she comes to the said age of.14. she shal haue liuery. And there it was also said ẏ these ii. yeres were geeuen to the lord to tēder her mariage in, for the tēder before was void, because it was wōn ẏ age of.14. years But note ẏ if the heire female being vnder the age of.14. yeres falleth into the kings hands as ward because of certen lāds that her father held of the king in cheefe, & by reason thereof the king hath also the lands in ward which are holden of other in socage, in this case whē she comes to the age of.14. years & is vnmaried she shall not haue liuery of these lands holden in socage, & yet by reason of thē ẏ king hath not the mariage of her. But what then? she cā not sue her lyuery by parcels, & that is the cause that the hole land shal tary in the kings hands till a whole liuery may be sued of thē all, & this appears in the new Natura breuium fo. 256. And last of al note ẏ this latter clause ertēds not to women that claym by purchase but only by discēt. And therefore it apperes Liuere.31.H.15.E.3. ẏ where it was found vpō the Diem clausit ẏ the wife was iointly infeffed wō her husband

husband she had an Ouster le main without finding any surerty of her mariage. And note also that by the cõmon law if one will mary the kings niek, that is to say, his bond womã wout licence hee shall pay a fine vnto the king as appeares in 33.E.3.Li.Assisartum. Trauers. 36.

Le Roy auera homage de chescun parcener et sur particion chescun de eux auera part del terre tenus de roy. Cap.v.

ET si vna hereditas que de Rege tenetur in capite descendat pluribus participibus tunc ones illi heredes facient homagium Regi et illa hereditas quę de Rege tenetur participabitur inter heredes illos ita quod quilibet eorum extunc partem suam tenebit de Rege.

This statut is sõ what declared by a statut made lõg time before, that is to say in the.14.yeare of king H. the.3. called statutum Hibernie de coheredibus whith for the better declaration of this prerogatiue I haue also here noted.

Hẽricus dei gracia rex Anglię dñs Hibernię et dux Aquitanię et Normanñ, comes Andigauie dilecto et fideli suo Gerardo filio Maurisci Iusticiar' Hibernie salutẽ. Cũ milites de partibus Hibernię nuper ad nos accedentes nobis ostenderunt quod cum hereditas deuoluta sit inter sorores in terra nostra Hibernie Iustic̃ nostri in eisdem partibus itinerant' in certi sunt, vtrum postnatę sorores tenere debeãt de primogenita sorore et ei facere homagiũ an non. Et quia predicti milites petierunt certiorari qualiter in regno nostro Anglie in casu consimili hactenus vsitatũ fuit sic ad instãtiã eorũdẽ vobis significam⁹, quod in regno nostro Anglie talis est lex et consuetudo in hoc casu, quod si quis tenuerit de nobis in capite et habuerit filias heredes ipõ patre defuncto ãtecessores nostri habuerũt, et nos sẽp habuimus et cepimus homagium

Magium de omnibus huiuſmodi filiabus et ſingule earũ te-
nerent de nobis in capite in hoc caſu. Et ſi infra etatem fue-
rint,nos habebimus cuſtodiam earum et maritagium ſingu-
larum.Si autem de alio domino tenuerint et ipſę ſorores in-
fra etatem fuerint,earum dominus habeat cuſtodiam et ma-
ritagium ſingularum,et primogenita tantum faciet homagi-
um domino pro ſe et omnibus ſororibus ſuis, et alie ſorores
cum ad etatem peruenerint facient ſeruicia dominis feodi
per manus primogenitę.Nec poteſt primogenita ea ratione
vel occaſione,a poſt natis ſororibus homagium vel cuſtodi-
am vel aliquam aliam ſubiectionẽ exigere,vel habere. Quia
cum omnes ſorores ſint quaſi vnus heres de vna hereditate,
ſi primogenita poſſet habere homagium aliarum ſororum
vel cuſtodiam petere,tũc eſſet illa hereditas diuiſa,ita quod
primogenita ſoror eſſet ſimul et ſemel de vna hereditate do
mina et heres.Heres autẽ ſuę partis,et domina ſororum ſua-
rum,quod quidem in iſto caſu fieri non poſſit,cum ipſa pri-
mogenita nihil poſſet petere plus quam alię ſorores niſi capi-
tale meſuagium ratione einecię.Preterea ſi primogenita hu-
iuſmodi homagium a poſtnatis ſororibus ſuis acciperet,eſ-
ſet quaſi domina earum,et habere poſſet cuſtodiam earum
et filiorum ſuorum,et hoc eſſet quaſi committere agnũ lupo
ad deuorandum. Et ideo vobis mandamus quod predictas
conſuetudines quas in regno noſtro Anglię habemus in hoc
caſu vt predictum eſt, in terra noſtra Hibernię proclamari
ac firmiter teneri facias et obſeruari.In cuius rei &c. Teſte
me ipõ apud weſt.ix.die Februarij.Anno regni noſtri.xiiii.

Before the making of this ſtatut called Statutum Hibernie it appeareth by Glanuil Li.7.ca.3. which wrote in the time of king Henry the ſecond ỹ the huſband of the eldeſt daughter ſhould doo homage vnto the Lord for the hole inheritaunce and that the other daughters or their huſbaunds ſhould

ſhoold doo their ſeruice for their tenements vnto the chiefe lord by the hands of theldeſt ſiſter or her huſband, and yet they for the ſame ſhould not bee bound to doo any homage or fealty to the eldeſt ſiſter or her huſband during their lyues, ne yet the heirs that come of them in the firſt degree or ſecond degree. But the heirs in the third degree by the law of the lãd were boũd to doo homage & to pay relief for their tenemẽts vnto the heire of the eldeſt daughter quod nota. And the reaſon of it after the mynd of Bractõ Lib. 1. de hom capiend' which agreeth with Glanuil is this, that when iſſue deſcendeth of them to the third or folwerth degree it is not like that iſſue ſhoold faile of their bodies, & then may the heirs of theldeſt daughter take homage very wel, for it is vnlikely ỹ the eldeſt daughter or her heirs ſhoold thẽ haue the ſame by diſcent, for theſe bee his wooꝛds, Quia cum ſint heredes tres de herede in heredẽ extũc vix poterint deficere, et ideo tũc ſequitur homagiũ abſq; dápno et periculo donatoris. For if there were likelyhod of the diſcẽt, in this caſe the taking of homage ſhoold bee rather hurtfull then beneficial: For by ỹ aũcient laws if one had infeffed an other to hold of him & had taken his homage, hee could neuer bee his heire afterwards, but the nert vnder ỹ feoffor & his heirs of the kinred ſhoold rather haue it. As put caſe before the ſtatut of Quia emptores the eldeſt ſonne had enfeoffed ỹ middlemoſt to hold of him & had takẽ his homage, ỹ middlemoſt dieth wõat iſſue, ỹ yongeſt ſhoold haue had ỹ land & not the eldeſt becauſe of ỹ homage ỹ hee toke: holwbeit yt there were no yonger ſonne nor any other heir, thẽ ỹ feoffor might claym the land agayn by eſchete & not otherwiſe: for as long as there were any, the feoffor or his heires of whõ the lands were ſo holden might not haue it. And that Bracton ſhewеth alſo in his firſt booke in the title de maritagijs reuerſis ad donatorẽ ꝑ defectu hered'. For he hath this text or ſaying there, quod homagium expellit dominicum et retinebit

retinebit seruitium et quod non potest quis esse dominus et heres: so that you may nowe perceyue that this statute of Irelande agreeth wyth Glanuill, sauinge that Glanuill dilateth or declares the common law farther then this statut doth. Also Bracton Li.1. saith further in his title of Homage ỹ if the eldest daughter in this case wil preuent the tyme & take homage before shee needeth, shee by ỹ leseth ỹ benefite of the discent, & saieth that the reason why the seruyce ought to bee done by the eldest for them al is, because ỹ lord shall not be driuen to take his seruice by parcell melẽ, & further saith that although the eldest may not haue homage of her sisters forthwith but must tary a tyme, yet shall they out of hand doo fealty vnto her, & all the other seruices that are to bee done, & the eldest shall do them ouer, which is cõtrary to Glanuil, for hee sayth the other sisters shall do neither homage nor fealty. Howbeit Britton fol.175. agreethe with Bracton, and there setteth forth the manner of the fealtie by the yonger sisters to dee doone to the elder & saith ỹ it is at the election of ỹ lord whether hee wil take homage & the other seruices by the hands of the eldest onely for thẽ all, or else of euery sister seuerally for her seruice, for if hee might not so doo, the lord in proces of tyme might happelye lese the wardship of the heires of ỹ other sisters, because of the woords in the writte of Ward, which are, that the ancestours dyed in his homage, & that would be harde to trye when the homage was euer done vnto him onely by the eldest sister. And Bracton in his said title of Homage sayeth, Cum quelibet soror de facto acapitauerit dño capitali hoc reuocari non poterit a primogeñ vel eius marito sed sẽp qd' factum est tenebit quia capitalis dñs quod ei oblat' est non recusabit sed siue tenuerint de dño Rege siue de alio cũ homagium factum fuerit siue ante tercium hered' siue post statim sequẽtur releuiũ et alia seruic' & a litle before that sayeth, si plures sorores de dño rege tenuerint in capite tũc primogenit' missa omnes acapitabunt et homagium faciẽt dño

Regi, and therwith agreeth Britton.fo.171. And yet fo,168. saieth that theldest onely shall doo homage vnto the kinge for her selfe & her sisters. Thus haue you now therpositiō of ỳ said statut of Irelād by the old writers, by which said statute & the saide writers yt appeareth that this statut of Prerogatiue is but a confirmacion of the common law, & deth only set forth & declare what the kings Prerogatiue is whē landes holden in chiefe discend to two coparceners. For in this the king hath a Prerogatiue aboue a comon person, aswel forthat they shall seuerally holde of his highnes, as for that that his highnes shall make the partition, for whether they bee of full age at the death of their aūcestour or within age, or some of them of ful age & some of them within age, none of them that bee of ful age shal haue any liuery but wō a partition, & that for the kinges benefite: because that vpō the partition euery one of thē shall haue for his porciō some parte of the lands that are holden of the kynge in Capite. For if some should haue for theire porcion onlye the landes holden of other, then the king shoulde lose his prerogatiue in those lāds hereafter for euer, because that they that haue them when they shall dye hold nothing of ỳ kinge in capite and so might the kynge be diminished of his annciēt rights of the Crowne, which were against all naturall equite. Wherefore the law was euer they should all holde of the king. And that appeareth by the writs of Liuerie, in which writes there is a prouiso that euery one of them shall haue in her purparte parcel of the lands that are holden of the king in Capite, as you may see in the nēw Natura brevium 259.c And this liuery must be sued with a partition or else it is misused, & it cannot be sued forth vntill such tyme as al the writes of Diem clausit extremū are come into ỳ Chaūcery and returned, as apprareth Liuery 29.H.6.E.3. And then if al ỳ copercenors be foūd of full age, thē a writ shall go out of ỳ Chaūcery to ỳ Sherife to extende ỳ lāds, & after

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the extent returned, a writ shal goe to therchetour to make partition & liuery according to thextent therof made as appeareth in the newe Natura breuium. fo. 259. But if one of the coperceners be within age and in the kinges warde, then the partition may bee made in the Chauncery & thē to haue a writ of Liuery to therchetour of her parte, or else it may bee wholly done in ỹ Coūtry by therchetour lyke as they had bene both of full age, that is to say, shee of ful age being there present in her owe persō, and shee that is within age onlye by Prochein amye, as it appeareth in the sayd new Natura breuium. fo. 261. Which writ shall bee returned with the partition and afterwardes enrolled in the Chauncery. And it shoulde seeme that if after the writ of extent retourned shee that is of full age do praye a writ of liuery with a partition, that shee shall then neuer after haue a reerent if so be that before it were so highly extēded. Like law is it if the partition be not egal, and shee notwithstandinge will accept it. But in al those cases she that was within age if she haue too litle for her portiō, she may haue a writ of Participatione faciēda against her other coperceiner or a Scire facias in the chauncery vppon the recorde of Partition that is there, to shew why new partition or extent shall not bee made. By which writ if they be warned and come not, or come and saye nothing, the land shalbe reseysed into the kinges hands, and a new extent made in the presence of the parties, which if it be not extēded as it should be, they may pray a reextent before partition made: for after partition the praier cometh to late. And this may ye see in ỹ new Natura breuiū. fo. 62. h. & in H. 2. E. 3. 20. & Liuere. 63. E. 1. but learne whether shee may defete the partitiō by ētre wōute suynge any such writes or no, because the other are in by matt̄ of record, ỹ is to say, by liuery, wherūto she is also after a maner party. So is it not like ỹ case of a strāger

for a stranger ỹ hath eigne title may enter vppon thē after Liuery notwithstandinge they haue the possession by matter of record. And it is sayd by Hill. T.17. E.3.f.37. that advowson assigned in Purparty may bee defeted by putting debate vppon the presentment without any other Proces: And note that sometymes the king is to take a detriment by the liuere with the partition: As take ỹ case to be where some of them be within age and in the kinges warde and some of full age and theyr auncestour dyeth seased not only of Landes holden in chiefe but also of Landes holden of other Lordes, they of full age haue liuery with a partition, now the kinge leeses the wardship of as much of the lands that are holden of other as they haue Liuery of, and yet if no partition had beene made the kinge shoulde haue had ỹ Wardshippe of the whole til the heyre had come of ful age as Mombray affirmeth M.21.E.3.f.3. And note also that of thinges entier the kinge shall haue by nonage of one of thē the whole, and the other that bee of full age get no parte of it ne yet liuery therof ne partition: as take the case to bee this: A maner holden of the king in chiefe wherūto advouson is appendant discend vnto three coparceners, and one of them is within age and in the Kinges warde, the other two that bee of full age may sue theire liuery for the lande with a partition, but not for the advowson: For that shall wholly remayne to the kynge during the minority of her that is in warde. And this appeareth Quare impedit. 1. T. 31. E.3. M.38. H.6.9. M.21. E.3.f.32 And note that if vppō partition made therchetour retourneth ỹ some haue ther parts deliuered them & some not, because they sued not to him for it, they ỹ did not sue, may at all tymes in ỹ chaūcery sue out a writte vnto Therchetour to haue the same deliuered vnto thē, in which writte there shalbee enclosed a transcripte of ỹ Partition, as it appeareth in ỹ saide new Natura breuium fol.262. and there it appeereth also fol.263. that Iuery with

a partition

a partition was sued for lands holden in Burgage: but by lykelyhood it was no common burgage: For as it appeareth the heir did his homage for the sayd lands. And note also that if the Coparcener of full age take the part of her sister which is in the kinges Warde by lease or graunt of the king Durante minore etate, by this shee suspends the partition. For notwithstanding shee haue the one moity deliuered her with the profits of the other moity yet when her sister commeth to full age, both they shall sue a new liuery with a partition, as apeareth in the said new Natura breuium. fol. 262. c.

Le roy auera gard de heire marye per son pier deins lage de consent. Cap. vi.

SI mulier ante mortem anteeessoris sui qui de rege tenet in capite ante annos nubiles maritat' fuerit tunc rex habebit custodiam corporis illius mulieris vsq; ad etatem quod consentire poterit. Et tũc elegat ipsa vtrum maluerit habere virũ illũ cui premaritat' fuerit vel alium quẽ rex ei obtulerit. Nullus qui de rege tenet in capite per seruicium militare potest alienare maiorem partem terrarum suarum ita quod residuum non sufficiat ad faciendum seruicium suum, sine licentia Regis, sed hoc non consueuit intelligi de membris & particulis earundem terrarum.

This Chapter containeth two matters beeing dyuers in nature, and therefore I entend to seuer and deuyde the one from the other, and to adioyn the latter branch hereof to the chapter following because they intreat both of one thing.

This statute is but a confirmacion of the common law. For it is written in Gard. 147. 13. H. 3. in thys wyse. Thomas summonitus est ad respondendum regi quare abduxit Helenam filiam et heredem E. &c. T. dicit quod Ipsę per

assensum E.in vita ipsius E.desponsauit predictam Helenã in facie ecclesie &c.et quia predicta Helena est infra etatem et cum ad etatem peruenerit potest consentire matrimonio vel dissentire,ideo remanet predicta Helena in custodia dñi Regis vsque ad etatem vt consentiat vel dissentiat &c. Here it is not set forth nor expressed what is thage in a woman to consent to matrimony,& that is all that is to bee sought vpon this statut: for Bracton in his first booke in the latter end of a chapter which hath this paragrafe.s. De minoribus qui debent esse sub tutela et cura dominorum vel parentum sayth quod femina septimo anno etatis sue potest consentire matrimonio, et virum sustinere áno duodecimo for he sayeth,quod femina maius est capax doli quá masculus et quod maturiora sunt vota mulieris quá viri: So that by him it appeareth that a woman may consent to matrymony after shee is vii. yeares of age.And so I iudge ỹ law was at that time taken. For it appeares in Gard.P.138.12 E.1.that a man that held by knights service maried hys heire apparant being vnder age and died,the lord claimed the wardship of the body and an issue was tended agaynst him, that at the time of the sayd mariage the infaunt was of thage of seauen yeres,and this issue was receiued by the court for a good issue to barre the lord of the wardshipof the body, quod nota. Howbeit it appears not by the said booke whether the heire were male or female and vvangford sayes H.35.H.6.fo.41.that when a woman is. vij. yeares of age her auncester may then gather ayd to mary her, whithe saying argueth as mee seemeth that shee is maryageable. And also this seemes to make with Bracton. Howbeit the law is not so taken in these dayes. For shee cãnot now consẽt to matrimony before the age of twelue years. This statut speakes onely of the heire female, and yet Cheyny sayeth in H.7. H.6.fo.10. that the heire male shall be taken within the compasse of this statut by an equitye,

because

because the statute is beneficiall: And so it shoold appeere Gard.156.30.E.1.f. 128.temps E.1.where ꝑsonne was maried in the life of his aunceſter then beeing no more then of thage of.v.yeres,& whē the child came to thage of.xii. yeres thanceſtor dyed & the court adiudged in this case ꝑ the lord shoold haue the wardshipp of the body, to thentent that ꝑ the enfaunt hereafter ere hee passe thage of 14. yeres disagree to the first mariage, the lord may haue the maryage of him: And so it may appere by this book that this statute is but a confirmation of the common law, for euery lorde shall haue lyke aduauntage in this case as the king shall haue,and therewith agrees Paston.H.7.H.6.f.11. addyng further to this that by the order of the common law beefore this statut of Prerogatiue, if the heir woold haue stād to the first mariage when hee or shee came to the yeres of consent, they shoold haue payd the double value: and by this statute they paye nothing, and therefore the case was there: The kings tenant in chiefe hauing a sonne and heir of thage of.14.yeres dooth marry him and dyeth, the king offers the child mariage at the age of.14. yeares which hee refuseth,and holds him self to the first mariage, & aiudged that thenfant might so doo and that for the same he shoold neuer pay the double value ne single of his mariage, and there Babthorp saith that if the woman had died the heire being within the age of consent, the king shoold haue had the mariage of the child, notwithstanding that hee was once maried in the life of his aunceſtor, for it was no mariage,but at pleasure:and therewith agrees Britton.f.169 yea although the wife had dyed after the yeres of consent and before the child had come to thage of. xxi.yeres, quere of this matter for I am enformed that the law is not take at this day as the said book is in.7.H.6.

Le roy auera fine pur alienation son tenaunt sans lycence, Cap.vii.

DE Sericantiis alienatis sine licentia regis cõsueuit rex arentare huiusmodi Sericantias per rationabilem extentam inde faciendam.

It appeareth by Glanuill in the beginning of his seuenth booke cap.1.fol. 44. that euery freeman hauing land whether he had an heire apparaunt then liuing or not, or whether the said heire apparaunt woold consent to it or not, yet might hee geeue some reasonable porcion of his lands with his daughter or any other woman in mariage, or to any man that had doon him seruice, or in almes to any religious house, or to any other whom hee woold, so the said gift were made in his health, for in extremitie of sickneſſe hee might not bee suffered so to doo, leaſt it should be thought to bee doone rather of a rage & fury of the mynd, which through sickness for the most part commeth to men, then of any good discrecion & so might hee in his gift exceede measure. Howbeit such a gift in sickness was euer good with the consent of the heire or with his confirmacion. Agayn if hee had many sonnes, hee could not without the consent of his heire apparaunt geeue any porcion of his enheritance to any of the yonger sonnes, for so might hee disherit theldeſt thorough affeccion that the fathers lightly beare towards their yonger sonne more then towards thelder. But of his pourchased lands hee might geeue the yonger a porcion whether theldeſt woold or not. And if he had none issue hee might geeue away all his purchased lands. But of the lands of his inheritance hee might geeue away no more but a reasonable porcion. And if the lands were departible amongſt the heirs males, then might the father in his life time geeue euery chyld what portion hee woold, so it exceaded not the porciõ that should descend vnto him. And in that case whether the gift were of lands purchased or of inheritaunce it made no matter. Howbeit neyther Abbot nor Bishop might in any of these cases geeue

any

any porcion of their lands away, without the kings assent or his confirmatiõ, because their baronies bee of the almes of the king or of his progenitors. Hitherto haue yee hard what Glanuill hath sayd. After this was the statut of Magna charta made, where in the.31.chapter thereof it is written, Nullus liber homo det de cetero amplius de terra sua vel vendat de cetero, quã vt de residuo terre sue possit sufficienter fieri dño feodi seruiciũ ei debitum quod pertinet ad feodum illud. Which statut is but a confirmation of the common law, as it dooth appeare by that that is wryten in Glanuil for so one that had held by knights seruyce if hee might haue been suffred to alien the greatest part of his land hee woold haue alienedthe same peraduenture to hold of him but in Socage or by some smal rent, & then hauing so litle a liuelihod left to himself, how had he been thẽ able to haue doon the seruice of a knight or a mã of warre, or what shoold his lord haue had in ward to haue foũd one to haue doon that seruice, surely litle or nothing. Whereby the strength of the realme might haue much decayed: therefore it was a reasonable law to restrayn him as mee seemeth. Howbeit Bracton in his first booke vnder the title Si ille cui datum est rem datam vlterius alteri dare possit disputes this matter after a sort, that is to say, whether the tenãt may enfeffe an other against ỹ lords will or not, & he there affirmes hee may, yea & that to hold of him by what seruice hee will, and calleth it Damnum absque iniuria, seeing that though the wardship bee not so good after alienacion to the cheefe lord as it was before, yet the relief ys as good in euery point, and then if the lord bee serued either of the wardship or relief, hee hath all that knights seruice requireth. Howbeit sayeth hee when the tenaunt is so disposed to sell his land, the lord shalbe preferred to the sale thereof beefore a straunger geeuing as much as an other will. It seemeth by Bracton that it was very doubtful notwithstanding

standing the statut of Magna carta whether ỹ kings tenãt might alien his whole tenancy or not. And therfore was ỹ statut of Quia emptores terrarũ made, where it is prouyded ỹ from thencefoorth which is in the.18.yere of k.E.the first & after Bractons tyme, it shoold bee lawfull for euery freeman to sell his lands or tenements or any part therof at his pleasure to hold of the chief lord by the same seruice ỹ the feffor held. Prouyded alwaies that by any such sales there comes no lands to mortmain. This statut remedies the mischief that was found in the wardshipp, but not the other mischief that is to say touching the defence of the realme. For when one mans liuing is so dismembred neuer a one of them is able to doo the seruice of a mã for want of lyuehode. Yea and much more vnabler since this statute, then before. For before wher he gaue it to hold of himself, hee reserued somewhat in place of the land that went from him, where as now hee can reserue nothing of comõ right, Holbeit notwithstanding ỹ this statut of Quia emptores terrarũ, made it lawfull for all other mens tenauntes, yet was it not lawful by the said statut for the kings tenaunts so to doo, that is to say, neither to alien the whole, nor any parcell therof without the kings lycence. And that appeareth by Brittõ. f.88. Which speaks generally that ỹ kings tenants in chief cannot dismember his fees without his licence. And because ỹ before the tyme of king E. ỹ first they might haue alienod without licence to hold of themselfes, as other mens tenantes might haue doon in the like case, & thinking it more lawfull for them so to doo after ỹ making ỹ said statut of Quia emptores than before, it was thought good to prouide some stay for ỹ same by this statute of Prerogatiue. And yet by ỹ woords of ỹ other chapter following it appeareth ỹ the kings tenant by graund seriaunty, coold neuer haue alienod any lands holdẽ by grand serianty wõout ỹ kings lycẽce. For ỹ was so high a seruice, as Bracton

in

in his first booke in the title de magnis seriátiis names it Regale seruicium, & saith it was first inuented wõm this realm in the tyme of the Conquest, that they coulde not dismẽber any parte therof without the kinges lycence. For he saith in another place in ỹ sayd booke amõgest his writes of partition. Quod seriantia diuidi nõ debet ne cogatur Rex accipere seruiciũ suũ per particulas. Howbeit since the makinge of this statut of Prerogatiue, sundry opinions haue risẽ in these matters as may appeare by ỹ statut madẽ in the first yere of king E.3. ca.12. Which saith in this maner. Item pur ceo que plusours gents du Realme soy pleinõt deste greues de ceo que terres & tenemñts que sõt tenus en chiefe du roy, et aliens sans son conge ount este pris auant ceux heures en mains le roy et tenus cõe forfets, le roy, ne les teigne my cõe forfets en tiel case, mes voet et graunt que desormes de tiels terres et tenemẽtes aliens soit resonable syne pris en le chácerie per due proces, So ỹ by this statute it appeareth they toke the lands to bee forfeted that were holden of the king in chief & aliened without his licẽce And so it appeareth by a booke in T.9.E.3. fo.26. and Quare impedit.54. Pl.14. E.3. where VVilby saith that at this day landes holden by graund serianty and aliened without lycence bee forfeted. For the seruice of one mans body cannot bee changed into another mans body without the kinges assent. Also in the sayd first yeare of king E.3. ỹ.13. chap. It is prouyded in this wise. Et auxi cõe plusors gents du people soy pleynõt deste greues p purchase de terres et teñts que ont este tenus des auncestors le roy que ore est cõe des honours, et mesmñs tiels tenements ont este prises en le maine le roy. auxi si cõe ils eussent este tenus du roy en chief cõe de sa corone, le roy voet que mes ne soit home encheson pur nul tiel purchase. By this statut it appeareth ỹ if a man hold of ỹ king as of any honor which is come to his highnes by discẽt from any of his aunceStoures, that by reason thereof hee should not hold in Capite: For that was contrary to ỹ law, as it may appere by the wordes of the Statute, whych sayeth that the people complayned them selues to bee greeued hereby,

which

Which is to be vndestanded vniustlye greeued, for by the woords in the first chapter of Prerogatiua Regis, it appeareth that if it shalbe saide a tenure in Capite, it must bee holden of the crowne of a long time. s. ab antiquo de Corona And that is not when it is but newly come: and the statute of Magna Carta. ca. 3. dyd helpe this matter by erpresse woordes, If suche an honour came to the crowne by waye of eschete, but not if it came by waye of discent or any other waye. And that statute dooth set forth certayne honours by name which bee not of the auncientnes of the Crowne, that is to say the honour of Wallingforde, Notyngeham, Bolingbroke and Lancaster. Therefore hee that holdeth of the kinge as of these honoures, holdeth not of the kynge in chiefe. But other honours there bee which of so longe tyme haue beene annered to the Crowne that to holde of them is to hold in chiefe, as it appeareth in the new Natura breuium. fo. 256. a. & d. Where one helde of the kynge as of a certeine honour to yeld a certein rent to the keeping of the castell of Douer, this was there taken to bee a tenure in chiefe. And so it was where one helde of his highnes as of the honour of ỹ Abbey of Marle. Therefore learne what honours bee of the aũciẽtnes of the Crowne: and what not Also there is another Statute made in the. 34. yeare of the sayde kynge the. 15. chapiter. which sayeth in thys wyse.

Item accorde est et estabile que alienation de les terres & tenements faits per gents que teignont du roye Henry besayl au roy que ore est ou des auters roys deuant luy, a tener de eux mesmes, que les alienacions estoiẽt en lour force. Saluãt touts foits a nostre seignour le roy sa prerogatiue de temps son aiel son piere et son temps demesne. This latter statute doth argue ỹ the kynge ought to haue prerogatiue since the tyme of kyng E. ỹ. 1. & nõe before. And surely so was ỹ lawe takẽ, as it apeareth Ỹ. 20. E. 3. Assise 122. & 124. & 26. li. Ass. p 140. & therfore to the intẽt these alienacions made in king Ỹ.

beefore ſhould not now be brought in queſtion, this ſtatut was made ſo that his grace ſhould haue fyne for all alyenacions without lycence made ſince kinge Edwarde the firſt tyme, but not for any made before. And this ſhoulde bee the meaning of this ſtatute, which (vnder correctiõ) is myſtaken by maſter Fitz herbert in his Natura breuium. fo. 235 Howbeit for myne owne opinion I doo not ſee by al theſe ſtatutes but that the king hath his Prerogatiue by thorder of the commonlaw, at leſt wiſe as the comen law hath ben taken ſince the tyme of king Edward the firſt, or elſe hee could not haue it now, for any thinge ỹ I ſee prouyded for him by theſe ſtatutes. For this ſtatute of Prerogatyue goeth but to that where his tenaunt in chiefe alieneth ỹ greateſt parte without licence, Ergo Hee may alien the leſſer parte without lycence, and ſo dooth the ſtatute expreſſely ſet it foorth except you will ſay there bee two licences vnderſtanded here, that is to ſay a generall lycence by the order of the commen law, and a ſpeciall licence by this ſtatute, thone to bee requiſite where any parcel is ſolde, thother whē the more parcell is ſolde. Therfore enquire & learne what other mens opinions are vpon this ſtatute. For I fynd no booke to proue it common lawe before Brittons tyme, for Glanuill ne Bracton ſpeaketh any thinge of it. And where this ſtatute of Prerogatiue ſpeaketh onely but of knightes ſeruice, the law is otherwiſe taken. For if one doo holde of the kings highnes in Socage in chief hee can alien no pece without lycence. Then let vs ſee what thinges maye bee graunted or done without lycence and at what tyme: And howe the tenants that hath lycence ſhall purſue the ſame The kings tenaunt that holdeth of hym in chiefe may grãt a rent charge out of the ſame without lycence as yt appeareth 40. lib. Aſſ. H. 5. M. 7. H. 6. f. 2. For ỹ kinge by ỹ ſhall ſuſtaine no detriment. For his highnes nede not to hold it charged, except he wil. But if one holde an aduouſon of the

king,

king or a rent, & granteth ouer the same without licence, ỹ grantee shal pay a fyne. And that appereth Ỹ.21.E.3.fo.31. For there the case was that vpon lyuery with a partition, an aduouson was allotted solv to one of the coparceners & after by composition betwene her & her felowes shee was agreed to leaue thaduowson againe in common amongest them all & to present by tourne, & adiudged that this was an alienation, for the which she must make a fine: For before shee was tenant solv and now shee is become tenant iointly again with her felows. The lyke law is it if there bee lord mesne and tenaunt, the king is the Lorde and the mesnalty is holden of him in chiefe, if the mesne release to the tenant without licence, hee shal pay a fyne, as it appeareth. 38.li.Ass.p.17. & yet the release goeth there by way of extinguishment, but what then? he holds now by ỹ seruice the mesne did, that is to say, in chiefe, and so thereby the tenaunce is altered. The self same law is it if two iointenaunts bee, and thone release to thother without lycence, the king shal seise for a fyne, as it appeareth. 40.li.ass.p.5. Ỹ.8. Ỹ.4.f.8. For the lyke reasõ that is made in the case of the coparceners before. But where there is nothing but a bare right released which goeth by way of extinguishment otherwise it is. For they of thexcheker vpon a fyne sur release only vse to make out no proces to aunswer the kyng of an alienation. The kings tenaunt in chiefe may make a lease for terme of yeres without lycence, but not a lease for terme of lyfe, nor no higher interest, as it appereth. Ỹ. 45.E.3.f.6. & in the new Natura breuiũ f.175. Thẽ at what tyme or how hee should pursue his lycence: if the lycence bee graunted by one king hee cannot by vertue therof aliẽ in ỹ tyme of an other king as it apereth Offic̃ de court.29. Ỹ.2.E.3. Like law if ỹ lãds be in the kings hands for Primer seisin or alienactõ wout licẽce, at which time ỹ kig doth licẽce his tenãt to make a feffemẽt, he cãnot make this feffement

ment till the landes bee out of the kings handes, as appeareth H.21.H.7.f.7. Also hee that hath lycence may not vary from it in any point: Fines.124.P.18.E.2. As if the king lycence ỹ Abbot & Couent to make a feffemẽt, & thabbot sole will make it this is voide, as appeareth H.21. H.7.f.8. And there Frowike saide that if the kinge licence mee to make a feoffemẽt by deede, I can not make it without deede Nec e cõtrario. And herewũ agreeth the booke of H.3.E.3.5. where ỹ licence was to leuie a fyne of the maner of Dale to finde twoe chapleines & hee would haue leuyed ỹ fine leauynge out ỹ chapleines & coulde not bee suffred. And.M.30.E.3.17 ỹ licence was to leuy a fyne of the manour of Dale yelding a rẽt, & he woulde haue leuied ỹ fyne of ỹ manour wũ a Forpriſe, that is to saye, exceptinge certaine acres parcel of the manour yeldinge the rẽt, & coulde not bee receiued so to doo for that should not agree with the licence, which would ỹ whole manour to be charged with the rent. But if there had bene no rent reserued it seemes he mought haue aliened any part of the manour by a lycẽce of alienatiõ of ỹ whole manor Tamen quere, For it should seeme to be within the woords of this statute which woulde you shoulde not dysmember the kynges fees & learne if ỹ king licence his tenant to make a feffement, whether hee may make it vpon condicion or not, for they vse when a condicionel feoffemẽt is to be made to expresse the cõdicion wũ in the lycence: & if ỹ condicion be to make an estate againe to the feffour, al this goeth vnder one fyne & in one lycence M.33. H.6.fo.52. And note ỹ if the Iustices before whõe the fyne shabe leuyed be enformed ỹ the landes are holden of ỹ king & that so appere to thẽ by any record, they will not take the fine tyl they haue seen the licence nor yet engrosse it till they haue receiued a writ out of the Chauncery called Quod permittat finem illum leuari, by which they may be fully certified of ỹ kinges pleasure, which writ appereth in the new Na.bre.f.147.c.

And

and that they haue thus vsed it appeareth 4.E.second Fines 115. But they neuer vsed to doo vpon a recouery in these cõmen writs of entre in the Post, because ỹ recouerer in such case should pay no fyne: for it was no alienacion since the recouerer claimed not in by the tenaunt. But nowe by the statute made in the.32.yeare of kinge Henry the 8.c.1. it is ordeined that the recouerer in such case should pay a fyne for alienacion. And note that if an alienation bee made without lycence the pardon is moste comonlye made vnto the Feffee and not to the Feoffour. And so I suppose yt ought to bee, because the wrong groweth by the entre of ỹ Feffee whiche hath entred the kings fee without his lycence. And therefore the case is .14.H.6.f.26. that wher the kyngs tenaunt alieneth without lycence, and tooke estate agayne to him & to his wife in taile, the remainder ouer to his right heires and dieth without issue, and the kynge pardoneth the wyfe al maner of alienacions, this was thought good to exclude the kynge of his fyne that hee shoulde haue had for the saide alienation. And it is further to bee noted that the lycence must bee purchased vppon a true suggestiõ or els it is voide. For if the kinges tenaunt in taile pretending to bee tenaunt in fee simple will pourchase licence to make a Feoffemẽt, this is a voide lycẽce, as it appeareth 29.ass.30. & 40.li.Ass.36. And in al cases where ỹ kings tenãt in chief will dismember his tenaunce that is to say alien any parcel thereof without lycẽce, the kinge may distraine for his whole rent in the parcel so aliened, but if hee haue the kinges lycence to make such alienacion, the alience shall haue a writ in the Chauncery called de deonerãdo pro rata porcione, that hee shall no further bee charged then after the quantity of the porcion that hee holdeth. This writ you may see in the new Natura brevium.fo.235.a

The

Le Roy auera ſon preſentment nient obſtant q̃ leueſq; ad fait collation pour laps.

DE eccleſijs vacantibus quarum aduocaciones ſpectant ad regem & alij preſentauerint ad eaſdem: Ita qd' contentio inter dominum regem et alios oriatur ſi rex per conſideracionem curię preſentacionem ſuam recuperauerit licet poſt lapſum ſex menſium a tempore vacationis nullum currit ei tempus dum tamen rex preſentauerit infra tempus ſex menſium

Of thys chapter I fynd nothyng neyther in Glanuil, Bracton **nor** Britton **ne in any other old wryter before the makyng hereof, ſauing that I fynd this tert both in** Bracton **and** Britton .s. quod nullum tempus occurrit regi, **whych** Bracton **in the beeginning of his firſt booke vnder this tytle** que res dari poſſit **applieth vnto lyberties appertaining vnto the crowne ſaying in thys wiſe**, quod ille qui huiuſmodi libertatem ſibi vendicat doceat huiuſmodi ad ſe pertinere quia ſi warrantum non habuerit ſpeciale in hac libertate defendete non poterit quamuis pro ſe pretendit ſeiſinam longi temporis, diuturnitas enim longi temporis in hoc caſu non minuit iniuriam ſed auget nec in iſto caſu currit tempus contra regem nec incumbit ei probatio quod ad ipſum pertinet cum conſtare debeat ſingulis quod huiuſmodi de iure gentium pertineant ad coronam ſed ſunt alie res que pertinent ad coronam que non ſunt ita ſacre quin tranſferri poſſunt, ſicut ſunt fundi, terre & tenementa & huiuſmodi per que corona Regis roboratur & in quibus currit tempus contra regem ſicut contra quamlibet priuatam perſonam. **This it appeareth by** Bracton **that this tert dooth not ſerue the kyng in all caſes, for preſcription ſhall hold ſometime agaynſt the kyng in ſuche thyngs as a manne may preſcribe in, as it is commen in our bookes that one ſhall preſcribe for wayſe and ſtrayſe**

and ſuch lyke agaynſt the kyng. And alſo it appeareth in the booke in Trauers.47.A-8,H.5.that the kyng may ſurceſſe his time:as where it is found that tenant for terme of life hath forfaited hys eſtate to the kyng,whereby the king ought to ſeaſe,if his grace ſeaſe not but tary til hee be dead ſo that hee in the reuercion entreth,hee can not then ſeaſe, and ſo it may appeare vnto you that though this bee an auncient text quod nullum tempus occurrit regi,yet in caſes it dooth:and where this text is onely appointed by this ſtatut to ſerue where the biſhop taketh the benefyt by laps, yet by an equitie it is taken in ſome caſes to extend to a plenarty,that is to ſay,where a ſtraunger hath preſented and his clerk is in by ſix moneths: As take the caſe to be where the king hath aduowſon in ward & a ſtraũger vſurps and his clerk is in by ſix monethes before the king bring his Quare impedit,yet ſhal this plenartie bee no plea agaynſt his highnes,but that hee ſhall recouer: and the reaſon of yt is,becauſe els the kyng ſhoold bee without remedy. For writ of right hee cannot haue hauing but an eſtate in the thing as gardeyn. Wherefore in this caſe nullum occurrit ei tempus, for els it ſhould appere that a ſtraunger myght hold a thing merely by wrong agaynſt him without any good ground or beginning that can bee intended of it,whiche caſe is agreed P.18.E.3.fo.16.&.P.43.E.3.fol.14. But yet in this caſe the king may not put out thincũbent which is admitted,inſtituted,and inducted in the benefyce wythout ſute, that is to ſay, Quare impedit,becauſe it is ſo prouided by the ſtatut of.25.E.3.capitulo.3.& 13.R.2.capitulo.1. Like law is it if the kyngs tenaunt bee ſeaſed of a manner holden in chiefe to the which aduowſon is appendaunt and alieneth the manner wyth the aduowſon wythout licens, after the church becomes voyd and a ſtraunger vſurps and ſo twenty vſurpations one after an other, and afterward

theſe

theſe alienacions without licence are found by office, and the church beecommes voyd, the kyng ſhall preſent notwithſtanding thoſe vſurpacions, and if the churche bee full, his highneſſe may haue a Quare impedit againſt the incumbent Cauſa qua ſupra. And thys appeares in H. 4. E.3.folio.2, But if the kyng bee ſeaſed of an aduowſon in his demeane as of fee, it ſeemes that plenarty ſhalbee a good plea againſt hym, for there his highneſſe hath remedy prouided hym, that is to ſay, by writ of ryght, and ſo is thoppinion of Shard & wylby P.18.E.3.folio.15. Quere, for in the booke of P.43.E.3.fo.14. the defendant durſt not abyde by the plea but trauerſed the title that was made for the kyng. And learn whether plenarty bee a good plea againſt the queene which holdeth for terme of lyfe the reuercion to the kyng, for this caſe is alſo left at large in P.18.E.3.folio.13. Now to the ſtatut, where the woords bee that no laps ſhall hold agaynſt the kyng if hee preſent wythin ſix monethes. Theſe woords yt hee preſent within ſix moneths bee voyd, for theagh hee preſent not, yet title of laps ſhall not take place agaynſt him by thys ſtatut, and therefore the booke is P.18.E.3. folio. 21. that where the laps was incurred in the life of the kyngs tenaunt and beefore the ordinary preſented the tenaunt dyed and yt was adiudged that the kyng ſhoold haue the preſentment and not the ordinarie: but peraduenture you wil ſay in that caſe the king could not preſent within the ſix monethes, beecauſe his tenaunt was yet aliue. What ſay you then to this caſe: if the laps did incurre after the death of the kyngs tenaunt and beefore office found, the kyng notwithſtandyng ſhall haue the preſentment after offyce found as it is agreed P.14.H.7.22. and yet there the kyng might haue preſented after the death of his tenaunt before office found and dyd not. And in the ſayd booke of P.14.

H.7.folio.21. it is left for a queſtion, ſins the ordinary can not preſent by laps againſt the kyng, how and in what manner the cure ſhallbee ſerued in the meane tyme that is to ſay, beetweene the laps and the kyngs preſentment ſome thynk in that caſe that the ordynary ſhould preſent one for the meane tyme whych ſhould bee remouable alwayes at the kyngs pleaſure, and ſome other thynk hee ſhould ſequeſter the fruytes to fynd the cure Ideo quere. And Bracton lib.tertio in the writ of Darrein preſentment ſayeth that this title of preſentment by laps was geeuen to thordinarie by a conſtitucion made in the counſell of Lateranenſe.

Le Roy auera le gard de terres de Ideots. Cap.ix.

REx habebit cuſtodiam terrarum fatuorum naturalium capiendo exitus eorundem ſine vaſto & deſtruccione, & inueniet eis neceſſaria ſua de cuiuſcunque feodo terre ille fuerint, et poſt mortem eorum reddat eam rectis heredibus ita quod nullatenus per eoſdem fatuos alienentur nec quod eorum heredes exheredentur.

This prerogatiue beganne in the time of kyng Edward the firſt, as it ſhoold ſeeme to mee, beecauſe I fynd none that wrote of it before Britton, for Bracton ſpeakes but a lytle of Ideots and that in his fyfth booke in the tytle of exceptions agaynſt the playntife where hee ſayeth: yt ys a good exception to the parſone of hym that complayneth or bringeth any accion to ſay hee is a foole naturall, quia tales non multum diſtant a brutis qui ratione carent nec valere debet quod cum talibus agitur ſed tamen diſcuſſio huiuſmodi exceptionis diſcrecioni iudicis relinquitur: and

ſaieth

sayeth lyke law is it of hym that could neuer heere nor speak from the tyme of his natiuity, & quod inuenienda sunt eis necessaria quoad vixerint per officium iudicis pro qualitate persone & hereditatis quãtitate si heres esse debeat & si semel auctoritate curatoris adquisierit si fuerit inde eiectus recuperabit per assisam sicut minor. By this it appeeres that the kyng had no prerogatiue but the Judge. Howbeit Britton. f.167. saith that the king ought to haue his prerogatiue heerein, for these bee his woordes: Et pur ceo que ascun foits auient que ascun heire est sotte nait per quoy il nest my able a heritage demaunder et garder volumus que tiels heires de qui que ils vnques teignount males & females demurgent en nostre gard ouesque toutes lour heritages sauaunt a chescun seignour toutes auters seruyces que a luy appende de terre tenus de luy & icy remaynount en nostre gard taunt come ils duraunt en lour sotye & ceo ne voillomus nous my de ceux qui deueignont sotes per ascun maladye. Vppon these woordes of Britton I note three thinges, one is that the king shall not haue the custody duryng their lyfes but duryng their Ideocy, the secounde notwythstanding the lande is in the kynges handes, yet the other Lord shall haue theire seignoryes, whych is by way of peticion as I take it: and the thirde is that the other lord shall not haue the wardship of the heire nor of his landes but onely the king: whych three thinges by thys statute of Prerogatiue are not so plainlye sett foorth, and also by thys Statute it appeares that the king shall haue the custody of suche Ideots duryng theyre lyues, for the woordes bee, Et post mortem eorum reddat eam rectis heredibus and not beefore. The manner how the kyng shall come to his Prerogatiue appeares by a booke case Lyuery. 30. T. 16. Edwarde. 3. where Sharde sayes that when the kyng is enfourmed that there is such

an Ideott his highneſſe ſhall ſende for him and cauſe hym to bee brought beefore hys Chauncellour or ſome other whome hee ſhall appoynt, and if by examination hee bee found an Ideot, yet hys highneſſe ought not to ſeaſe hys landes vntill ſuch tyme as hee bee founde an Ideot by office. And in the newe Natura breuium. folio.232.b. it appeares that the kyng appoynts all this matter to theſcheatour or ſherife bothe to examine and enquire, in whyche ſayd Natura breuium.fol.202.e. It appeeres that this office when it is founde ſhall haue relation a natiuitate to auoyde all meane actes doon by the Ideot, that is to ſaye, his feoffement or releaſe: but learne and enquire whether ſuche feffees ſhalbee put out by thoffice without anye Scire facias to bee awarded againſt them. In Scire facias.10.H 18.E.3.et 116. H.32.E.3. & 50.li.aſſ.p.2.a Scire fac̃ was awarded in that caſe, and learne alſo whether the office ſhall haue relation for the profits from the tyme of hys natiuitie or onely from the fynding of thoffice. Then to the expoſition, the woords bee. Rex habebit cuſtodiam terrarum fatuorum naturalium. By theſe woords it appeareth that hee muſt bee a foole naturall, that is to ſaye, a foole a natiuitate: for if hee were once wiſe and beecame a foole by chaunce or miſfortune, the king ſhall not haue the cuſtody of him, and ſo it is agreed in H.18.E.3. Scire facias 10. And alſo in the newe Natura breuium.folio.233.and the maner of the tryall of hym to bee a fool naturall appeeres in the ſaid Natura breuium folio.233. That is to ſay, yf hee cannot tell to twenty pence, or tell his age, or who was his father and mother, or ſuche lyke thinges: whereby it may appeere hee hath no kynde of vnderſtanding in that that is eyther for his profite or damnage. But if hee bee learned or apt to learne, then is hee no Ideot as Maiſter Fitzherbert there thinkes, and Greene ſayth in Sauer de

defaut

default .37.H.31.Ed.3. That if hee bee able to begeat eyther ſonne or doughter hee is no foole natural. The woordes of the ſtatute be further, Capiendo omnes exitus eorundem ſine vaſto et deſtruccione et inueniet eis neceſſaria ſua. By theſe woords it appeareth that the kyng may take the profites to his owne vſe, fynding them their neceſſaries. And therefore in the booke beefore of.31. E.3. the king dyd lett the lande vnto one of the coſyns of the Ideot yelding a rent but theſe woords (inueniet eis neceſſaria) is not onely ment to the Ideots them ſelues, but alſo to all them that hang vppon them, as their wyfe children and family. And alſo by theſe woords ſine vaſto & deſtruccione, it appeareth the kyng is bounde to reparacions of their landes and tenementes. The woords bee alſo, De cuiuſcunque feodo terre ille fuerint, By thoſe woords Gard.5. H.3. E.2 yt ſhoold ſeeme the kyng ſhoold bee preferred in this tytle of Ideocy, beefore any other lord whych myght claime the Ideot as his warde, howbeeit learne what other men think therein. Et poſt mortem eorum reddat eam rectis heredibus. By theſe woordes it ſhoold appeere that the king ſhoold haue the cuſtody duryng the lyfe of the Ideot and that then an Ouſter le mayne in nature of a lyuerye ſhalbee ſued of the ſame out of the kings handes: but whether yt ſhalbee made wyth the yſſues and profites from the tyme of the Ideots death, or onely but from the tyme of the tender of the Ouſter le main learne, but yf the lands that the kyng had ſo in cuſtody bee holden of him in Capite, then notwythſtandyng theſe woords of the ſtatute yet the kyng ſhall haue wardſhip, primer ſeiſin, and all other Prerogatiues as if his tenaunt in chiefe had dyed ſeaſed thereof, being no Ideot, as it may appere in ỹ new Natura breuium fo.256.d. And there it appeeres folio.252.h. alſo, that although the Ideot held no landes of the kyng, yet a

Diem clauſit extremum ſhalbee awarded after hys death to enquire what lands hee dyed ſeyſed of, of whome they are holden &c. And it is to bee noted that if one bee found Ideot by office and beefore the kyng ſealeth the lands the Ideot dyes, yet the king ſhall ſeaſe, becauſe of theſe wordes in the ſtatute .s. poſt mortem eorum reddat eam rectis heredibus, whiche his grace cannot doo but vppon a ſeiſure, and this apperes .H.18.E.3. Scire facias.10. And note alſo that if there deſcend to an Ideott no poſſeſſion in landes but onely a right, bee it right of entre or title of entre or right of accion, the king ſhal not enter and haue the cuſtody of the ſame, as appeeres in .H.1.H.7.fol.24. & H.2.H.7. fo.3. and yet if his tenant of lands holdē of him by knights ſeruyce bee diſſeiſed and dyeth his heire wythin age, the kyng ſhall enter and holde the ſame in warde: and therefore learne what is the reaſon that ſhoold make a difference in theſe actes. The woords bee further Ita quod nullatenus per eoſdem fatuos alienentur nec quod eorum heredes exheredentur. By theſe woords it appeareth the lands cannot bee aliened by the Ideot nor the heires diſheryted, and therefore if the Ideot make a feoffement or releaſe of his lands and that found by offyce, the king ſhall auoide it as I haue beefore noted and ſo lykewiſe his heires after his death by force of theſe woords of the ſtatute. And yet it apperes Sauer defaut.37.H.31.E.3. ya recouery by default paſſed againſt an Ideott, but execucion of the iudgement was ſtayed beecauſe the kynges poſſeſſion: whiche proones that notwithſtanding the king haue the poſſeſſion during the Ideots lyfe, yet his highnes hath no freehold thereby but onely a bare cuſtody, for the freehold remaines in the heire. And therewyth agrees. H.17.E.3. fo.11. But what then? this recouery is not lyke to thys alienation, for by the recouery the Ideots heire is not diſherited

eited by thact of hys auncestour if so bee that the recouery were vppon a good tytle. And it appeeres in. P.33. H. 6.fo.18. That an Ideot shall not bee receiued to pleade by gardeyne or Procheine amye, but hee him selfe shall appere in proper person in euery accion brought against him, and whosoeuer wyll pleade best for him shalbee admitted: and learne and enquire if the Ideott bee but tenaunt for tearme of lyfe or yeares if the kyng shall haue his prerogatyue therein or not, beecause the Ideot cannot alyen that lande to the dysherison of hys heire: and if hee shall, how the lessor shall punyshe the waste doon in the kynges tyme. And learne also whether the kyng shall haue the goodes of an Ideot as well as lande. Then last of all yf one bee found Ideot whyche is none in deede. The maner how hee shall auoide thys office appeeres in the newe Natura breuium fo.233.a. That is to saye, hee that is falsly founde to bee an Ideot eyther by him selfe or his frends shall come into the Chauncery or beefore the Chauncellour of Englande and the kynges counsell and praye to bee examined of his Ideocy, or hee may sue a writte out of the Chauncerye to him that hath the keeping of him to bring hym beefore the kyng and his counsell to bee examined, and if hee bee found vppon hys examination to bee no Ideot, then by that is thoffice and all the reste of the proces auoided without anye farther trauerse: Howbeeit where a Scire facias ys awarded against the feffee of the Ideot, there the feffee appearyng vppon the Scire facias may trauerse the Ideocy, as it appeeres, he did in the book beefore Scire facias. 10. H. 18. Ed. 3. And note that by a statute made in the .32. of Henry the eyght, the. xlvi. chapiter, Ideottes and theire landes bee in the suruey of the court of wardes, and the same court may lett and sett their landes

but

but not to grant ỹ cuſtody of their bodyes for any wordes that I can perceiue in the ſame ſtatute.

Le Roy purueiera pur luy que neſt de ſane memory. Cap.x.

ITem Rex prouidebit quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis ſue ſicut quidam ſunt per lucida interualla quod terre et tenementa eiuſdem ſaluo cuſtodiantur ſine vaſto & deſtructione, et quod ipſe et familia ſua de exitibus eorundem viuant & ſuſtineantur competenter, & reſiduum vltra ſuſtentationem eorundem rationabiliter cuſtodiatur ad opus ipſorum, liberandum eiſdem quando memoriam recuperauerint, ita quod predicta terre & tenementa infra predictum tempus nullatenus alienentur, nec rex aliquid de exitibus percipiat ad opus ſuum. Et ſi obierit in tali ſtatu, tunc illud reſiduum diſtribuatur pro anima eiuſdem per conſilium ordinarij.

It appeeres by Bracton in his fyfth booke amongeſt the exceptions to the perſon of the plaintife that it is a good exception to ſay that hee that is demaundant or pleintyfe is of Non ſane memory. For theſe bee his wordes. Competit etiam tenenti exceptio peremptoria ex perſona petentis ſi petens furioſus fuerit, vel non ſane mentis quod diſcernere neſciat, vel quod omnino nullam habeant diſcretionē: tales non multum diſtant a brutis que ratione carent, nec valet quod cum talibus agitur durante furore. Poſſunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habent furorem perpetuum: quod autem actum fuerit cum talibus tempore quo dilucidis gaudent interuallis ratum erit, ac ſi cum aliis ageretur ſiue furorem ſuum ſimulauerint ſiue non, acquirere quidem non poterunt in ipſo furore vel cum non fuerint ſane mentis aliqui qui conſentire non poſſunt nec adquiſita alienare vel dare, quia alienationi

enationi non magis consentire possunt quam adquisitioni, sed seisinam retinent quia animum mutare non possūt quē acquirendo cum essent sane mentis habuerunt & furor superueniens nichil adimit non maius quam morbus incurabilis, sicut lepra: secundum quod dicitur quod multa impediunt contrahendo que non dirimūt contractum, & ita sūt multa que impediunt promotionem, que non deiciunt iam promotum. Et talibus de necessitate dandus est tutor vel curator. So it appeereth by Bracton that in his tyme it was thought expedient that folkes that were destraught shoold haue a tutour or one that shoold take the charge of them, which office since is reuolued vnto the king & made parcell of his prerogatiue. For as Fitzherbert in his Natura breuium. folio. 232. very wel saith. The king is the protectour of all hys subiectes and of all theire goods, landes and tenements, and therefore of suche as cannot gouerne them selues nor order their lands and tenements his grace (as a father) must take vppon him to prouyde for them, that they them selues and their things may bee preserued. And beecause that lunacy or madnes ys not from the time of ones birth, (as Idecy is, but commeth sometimes by fyts or courses) hys grace therefore can claime no certeyne interest in the lunatike person, lyke as hee may doo in the Idcot: Gard. 5. M. 3. E. 3. And therefore it is ordained that his graee shall prouyde for such in the tyme of theire sayde Lunacy or maladies, that they or theire famely may bee sustained, & their thinges preserued accordingly as it is set foorth in this statute. And learne whether the kinges interest is such that after the death of the lunatike or the recouery of his wittes againe there must be an Ouster le main sued as it is sued in the case of the Idcot, or els ỹ the kings interest is aduoided maintenant by the death, or recouery again of the lunatike person.

Le roy

Le roy auera wreck balenas & ſturgiones. Cap. xi.

ITem rex habebit wreckum maris per totum regnum Balenas & Sturgiones captas in mari vel alibi infra regnum exceptis quibuſdam priuilegiat' locis per regem.

This prerogatiue the kyng euermore hadd by the order of the common lawe, as may appeare by Bracton **in his ſecond booke vnder the title** Que res dari poſſit: **where hee ſaith in this wiſe,** Sunt etiam alie res que pertinent ad coronam propter priuilegium regis & ita communem non recipiant libertatem, quin dari poſſunt & ad aliud tranſferri, quia tranſlatio nulli erit damnoſa niſi ipſi regi ſiue principi. Et ſi huiuſmodi res alicui conceſſe fuerint ſicut wreckum maris, Theſaurus inuentus, Craſſus piſcis, ſicut Ballena et Sturgio et alij piſces regales, oportet, ſi queſtio inde habeatur, quod illi qui huiuſmodi libertatem ſibi vendicat doceat huiuſmodi ad ſe pertinere, quia ſi vvarrantium non habuerit ſpeciale in hac libertate defendere non poterit, quamuis pro ſe pretendat ſeiſinam longi temporis, diuturnitas enim temporis in hoc caſu non minuit iniuriam ſed auget, nec in primo nec in ſecundo caſu currit tempus contra regem, nec ad ipſum incumbit probatio quod ad ipſum pertineat, cum conſtare debeat ſingulis quod huiuſmodi de iure gentium pertineant ad coronam.

And alſo in an other place of the ſaid booke vnder the title, De libertatibus. quis eas concedere poſſit, **hee ſaith.** Habebit rex pre ceteris oĩbus in regno ſuo priuilegia de iure gentiũ propria que de iure naturali eſſe debẽt inuẽtoris ſicut Theſaurus, vvreccũ, Craſſus piſcis. Sturgio, vvaiuę, q̃ in nullius bonis eſſe dicuntur, & dicũtur priuilegia, q̃ quamuis ad coronam

ronam pertineant, a corona ſeperari poſſunt,& ad priuatas perſonas tráſferri,ſed de gratia ipſius regis ſpeciali cuius gratia & conceſſio ſpecialis ſinon interuenerit tempus a tali peticione regem non excludat, & in hoc caſu comprobatione non egeat, quia nullum tempus currit contra eum.
And in this agrees Britton fol.26.t.fo.85.ſo that by theſe wꝛyters yt ſhoould appeare that at this time no man myght pꝛeſcribe in wreke de le mere . And that the law was then ſo taken it may appeare by theſe wooꝛds within the ſtatut, ſcilicet,exceptis quibuſdã priuilegiatis locis per Regẽ which argues that that muſt bee by the kyngs graunt foꝛ no place cã otherwiſe be pꝛiuileged by the king. Howbeit Hull' and Thirñ in M.11.H.4.fo.16. think that a man may pꝛeſcribe in wreke de la mere,tamen quere,foꝛ this ſtatut and Britton & Bracton are ſince the time of limitaciõ, ỹ is to ſay, king Richard ỹ firſt. The wooꝛds of ỹ ſtatut be farther, Ballenas et Sturgiones. Bracton in his ſecond booke vnder the title of wreke de la mere ſayes,quod de Sturgione ita obſeruatur, quod rex habebit illum integrum propter ſuum priuilegium , de Ballena vero ſufficit ſecundum quoſdam ſi rex inde habuerit caput & Regina caudam.
So in Bractons tyme it was doubted by the common law whether the king ſhoold haue this great fiſh cald Thirpole wholy oꝛ not. And ſo likewiſe in Brittons time, as it may appeare hys booke fo. 27. which now this ſtatut hath made cleere and without queſtion.

Le Roy auera leſchetes des terres des Normans et aliens de qui que ils teignñ ſauaunt les ſeigniories as ſeigniours. Cap.xii.

ITem habebit eſcaet' de terris Normanorum cuiuſcũq; feodi fuerint, ſaluo ſeruicio quod pertinet ad capitales dominos

minos feodi illius, et hoc ſimiliter intelligendū eſt, ſi aliquis hereditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad fidem regis Francie de tempore regis Iohannis et non ad fidem regis Anglie ſicut contingit de baronia Monumete poſt mortem Iohannis de Monumeta cuius heredes fuerunt de Britañ et alibi de feodis aliorum recuperauerit Henricus plures eſcaetas de terris Normannorum occaſione predicta, & eas contulit tenendas de capitalibus dominis feodi per ſeruitia inde debita et cõſueta.

It appeareth by the Cronicles that kyng Iohn was ỹ laſt duke of Normandy and that in his time Normandy was loſt, whereupon king Henry his ſonne as it may appeare by the later clauſe of this chapiter recouered diuers eſchets of land within this realme holden by Normans, whyche after they beganne to adhere to the French king the kings enemy and became traytors vnto his highneſſe, they forfaited all their lands by order of the common law to the king of whomſoeuer they were holden. Howbeit in ſuch caſes after the forfaiture, if the king had geeuen theſe landes to any other hee might not haue geeuen them to hold of him ſelfe, but onely of them of whō they weare before holden: as this ſtatut playnly declareth that king Henry the third ſo did. And likewiſe in M. 20. E. 3. Aſſ. 124. H. 46. E. 3. Peticion. 19. it appeareth that if the king do otherwiſe, hys patentee ſhalbee repelled and made to hold of the lords of whom the landes weare holden beefore the treaſon, and that by a peticion of ryght to bee ſued vnto the kyng for the redreſſe of the ſame, for other remedy haue they none, and diſtrayn they may not, as appeareth in the new Natura brevium folio. 159. A. And further it ſhould appeare by the ſayd booke of 20. E. 3. that the kyng ought not to reteyn ſuch land in his own hands no while but muſt diſpoſe them ouer to hold of them that were lords thereof

at the time of the treaſon committed. Hereby may you gather that this ſtatut in his fyrſt braunch is but a confirmacion of the common law, and that long time beefore the making hereof kyng Henry the third had this prerogatiue, as it dooth manifeſtly appeare in the later braunche thereof. And alſo by Bracton in his firſt booke in the title De cuſtod' & maritagijs dominorum, and likewiſe in Britton folio.28. The woords of the ſtatut bee further. Hoc ſimiliter intelligendum eſt ſi aliqua hereditas diſcendat alicui nato in partibus tranſmarinis et cuius anteceſſores fuerunt ad fidem regis Francię de tempore regis Iohannis Anglię, ſicut de baronia Monumete poſt mortem Iohānis de Monumeta, cuius heredes fuerunt de Brittannia vel alibi. By this braunch it ſhould appeare that at this tyme men of Normandy Gaſcoign, Guyon, Angeo and Brittain, were inheritable within this realme as well as Engliſh mē, becauſe that they were ſometime ſubiect vnto the kyng of England and vnder their dominion vntill king Iohns time as is afore ſayd, and yet after his time thoſe men (ſauing ſuch whoſe landes weare taken away for treaſon) weare ſtill inheritable within this realme, till the making of this ſtatut. And in the time of peace betweene the two kings of England and Fraunce they were aunſwerable within this realme if they had brought any action for their lands and tenements, as it dooth plainly appeare by Bracton in his fyfth booke in the title De exceptione quia alieni gena for theſe bee his woords. Eſt autem alia exceptio q̄ cōpetit tenenti ex perſona petentis propter defectum nationis q̄ dilatoria eſt, et non perimit, actionem. Vt ſi quis alienigena qui fuer' ad fidem regis Frācie et actionē inſtituit verſ⁹ aliquem qui fuerit ad fidem regis Anglię, talis non reſpondeatur ſaltem donec terre ſint communes, nec etiā ſi rex ei con-

conceſſerit ſpecialiter placitare, quia ſicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita non debet alienigena & Francigena qui fuerit ad fidem regis Francię audiri placitando in Anglia.

Note here that hee ſayeth that this exception is but dilatorie and not peremptorie, which, prooueth that hee ſhal haue his action at an other time, that is to ſay, in the time of peace. And alſo hee ſayeth after, Donec terre ſint communes, which is as much to ſay vntil ſuch time as there is peace betweene Fraũce and England. Alſo Bracton in his third booke vnder the title quod mulier oſtendat warrantum per quem petit dotem ſayeth ſi vvarrantus fuerit ad fidem regis Francię & excipiatur de warranto remanebit dotis exactio in ſuſpenſo imperpetuum vel ad tempus ſaltem donec terre fuerint communes. This warrant of dower is the heire of the husband for by thauncient law by Glanuil Li. 6. ca. 16. if a woman had brought her writ of dower against any other but the heire, hee was not bound to aunſwer her dower vntill ſuch time as ſhee had brought foorth her warrant that is to ſay, the heire. In like caſe after ſhee is endowed ſhee is not bound to anſwer to any other without the heire, and if it might appere that the heire had no right in the two partes, then ſhould ſhee bee barred of her accyon of dower, as it appeareth in the caſe before that his ryght is ſuſpended when hee is a Frenchman and the two realmes at warre. Howbeit it appeareth as I haue ſayd before that this exception is not peremptory, but ỹ after ỹ two realmes bee again at peace, ſhe ſhal haue her dower Dovver 179. M. 4. H. 3. The woords of this braunch be alſo in ỹ Copulatiue, that is to ſay, that the aunceſter muſt be of ỹ allegeaunce of the French kyng, & that the heire of the ſaid aũceſter is born in ỹ part beyond ſea. I put caſe than that the aunceſtor were of the allegeaunce both of the one kyng

and

and the other that is to say the Frenche king and the king of England whether is this within the compas of this statute? For Bracton in his saide v. book vnder the title De exceptione quia alienigena saith. Quod sũt aliqui qui sunt ad fidem vtriusque sicut fuit VV. comes Mareſcallus & manens in Anglia et Michaell de Seins manens in Francia et alii plures,et ita tamen quod si contingat guerra moueri inter Reges remaneat perſonaliter quilibet eorum cum eo cui fecerit ligeantiá. Whereby it should appeare that of such as were in allegeaunce to bothe kinges, the kynge shoulde haue no eſchetes of their landes. For the woords of the statute be not only ad fidem regis Francię, but also et non ad fidem regis Ang.ideo quere. And who shalbee inheritable at this day that bee borne in the parties beyonde the sea, and who not. See the statute therof made in the. 25. yeare of king Edwarde.3.de natis in partibus tranſmarinis.

Si lheire le tenant le roy en chief enter auát liuery nul franektenement luy accrue et la feme perdra ſa dower. Cap.xiiii.

QVando aliquis qui de rege tenet in Capite in fata decedat et heres eius ingrediatur teñtum quod anteceſſor ſuus tenuit de rege die quo obiit antequam fecerit homagium regi et ſeiſinam ſuam ceperit per regem tunc nullum accreſcit ei liberum tenemẽtum. Et ſi obierit ſeiſitus per idem tempus vxor eius non habebit dotem de tenemento illo,ſicut contingit de Matilda filia comitis Hereford vxoris Manuſel mareſcalli, q̃ poſt mortẽ VVilhelmi Mareſcalli Anglie fratris ſui cepit ſeiſinã caſtri et manerii de Scrogoill,et obiit in eodem caſtro antequã

intrasset per regem et fecisset ei homagium, et vnde concordatum fuit quod vxor non haberet dotem, eo quod vir suus non intrauit per Regem immo per intrusionem, sed hoc non intelligatur de Socagio et paruis tenuris.

This Statute is but an affirmation of the common lawe, as it may appeare by the case cõprised in the same which was ruled before the makinge of this statute and iudged accordinge to the effecte hereof. And this statute seemeth to putt a paine vppon the heires that will entrude before they haue sued theyre lyuere, and taketh awaye from them the free holde that the lawe had else vested in them: And yet it is not taken so generallye as the woords bee, but specially and onely of intrusions after office founde, and not before: And therefore if the heire enter after the deathe of his auncestour and before office founde, and the kynge pardoneth hym all entries wyth the profites, this is good and amounteth to a special liuere, so that the heyre needeth to sue no moe liueries, and yet if thentrusion were after office and then the kinge woulde pardone hym it were voyd, bycause that at the tyme of the pardone hee had no freehold whereuppon ẏ pardon might enure Ỿ.3. Ỿ 7. fo.3. Like law is if the heire before office enter and make a feffement & the kynge pardoneth the feoffe it is good, and yet such a feffmẽt after office wõ a pardon were voide for the reason I haue made before. Like law is if thentry be before office & the pdon after office this is voide, because that by office ẏ king taketh the possession from the heire or feffe, and then is ther no possession whereuppon the pardon maye enure: And so voide. For the office when it is founde hath relation from the death of the kynges tenaunt, if it bee so that the kynge doo not release his ryght before thoffyce founde, and that appereth. Ỿ. 16. Edward. 4. folio. 1. where it is also sayde that the pardon must bee aswell of profites as of the entrye,

entrye, or elles after office founde the kynge shalbee aunswered of the profites and M. 13. H. 4. f. 3. there is a difference put betwene the pardone that is made to the heyre, and the pardon that is made to the feoffee: For in the case of the feoffee the pardon must bee speciall rehersynge all the matters. Then let vs see further for the endowment, if after the death of the kynges tenaunt the heyre dooth not enter but dye before office found, hys wyfe shall bee endowed because of a possession in lawe that was in hym. P. 1. H. 7. 17. M. 38. E. 3. 30. Lyke lawe is it if hee dye after office founde and before any entry H. 4. H. 7. f. 1. Lyke lawe is it if hee entre before office and dye. But if the kinge bee once seised by office and the heyre dye before liuery and the nert heire will enter beefore a Deuenerunt sued and dyeth hys wyfe shall not bee endowed, for in that case it is an intrusion after office. For when the kynge is ones seised by office this seisine remayns till liuerye or Ouster le mayne bee sued, And this case is. P. 1. H. 7. 19. The woords of the Statute be further sed hoc non intelligatur de Socagio et paruis tenuris. These woords are to bee intended of common Socage, for if hee holde of the kynge in Socage in chief and will intrude after office, nullum accrescit ei liberum tenementum, no more than if the lands were holdē by knightes seruyce in cheefe. And it is a generall grounds that in all cases where hee that sueth hys general lyuery or Ouster le mayne missueth the same and entreth therby, thys entry is an intrusyon vppon the kynges possessyon, and his wyfe of that possession shall not bee endowed as appeareth H. 21. Edward. 3. f. 1. M. 24. E. 3. 65.

Le Roy auera leſchetes que aueigne quãt temporalties deueſque ſont en ſes mayns. Cap.xiiii.

ITem rex habebit eſcaetas de terris libere tenentium Archiepiſcoporum et Epiſcoporum quando ipſi tenentes damnati ſunt profelonia facta tempore vacationis, dum temporalia eorundem fuerunt in manu dnmini regis. cõferẽd' cui voluerit imperpetuum, ſaluo ſeruicio quod ad dictos prelatos inde pertinet et fieri conſueuit.

Of this ſtatute I fynde no booke caſe, Howbeit the letter of it is very playne and needs no maner of expoſition. For it goeth not to anye other eſchetes than ſuche as growe vppon offences. And if the crime or offence were done whyle the lande was in the kynges handes, notwithſtandinge the party were not attainted thereof vntill ſuch tyme as the landes bee out of the kings hands, yet the kinge ſhall haue the eſchete by force of this ſtatute. And heare it appeareth how the kynge ſhall not hold the landes forfaited ſtyll in his handes but muſt geeue them ouer to hold of them that they were holden of before.

Per grant de roy fees, auouſons, et dovvments des femes, ne paſſa, ſi ne sõt ſpecialmẽt noſmes. Cap.xv

QVando dominus Rex dat vel concedit alicui manerium vel terram cum pertiñ, niſi faciat in charta ſua vel ſcripto expreſſam mentionem de feodis mill' aduocationibus eccleſiarũ, et dotibus cum accidunt ad predictum manerium vel terram pertineñ tunc his diebus rex reſeruat ſibi eadem feoda, aduocationes cum dotibus licet inter alias perſonas non fuerint obſeruata.

At

It is agreed in T.43.E.3.f.22. that by the order of the cõmõ law before this statute, if ẏ king had ben seised of a maner to the which aduowsõ had beene appẽdãt, & had geeuẽ it to me, notwythstanding that in the kinges grant there had beene no mẽtion made of the auowson nor of these woordes cũ pertiñ, yet thauouson had passed from his highnes by the sayde grant: for in those dayes ẏ king was but a common p son, & a writte of Enter sur disseisin, & all other accions did lye against him as against any other comõ pson. And therfore in Ass.431, A.20.H.3. A writte of ẽtrie was brought against one supposing ẏ the had no entry but by disseisin, which ẏ king did to the demaũdant whẽ he was wtin age, & also VVilby.H.24.E.3.54. reporteth ẏ he hath sen a writ which was Precipe H.regi Angliæ, in place wherof is now geuen peticiõ by hys prerogatiue. And so it is said.li.H.22.E.3.3. ẏ in ẏ tyme of king H.3. & before the king should bee ẽpleded as any other comẽ pson. But king E. his sonne ordeyned ẏ none should sue him but be driuen to theire petition. Howbeit (sauing reformaciõ of these bookes) I think ẏ law was neuer so ẏ a mã should haue any such accion against ẏ king For Bracton which wrote in king H.3. time or nere thereupon, saith in his.iii. booke vnder ẏ title Contra quẽ cõpetit assisa in this wise: Inter cetera videndũ est quis sit ille qui deiecit, Princeps ex potentia vel aliquis nomine suo vel iudex qui male iudicauerit, an priuata persona, si princeps vel rex vel alius q̃ superiorẽ non habuerit nisi deum, contra ipsũ non habebitur remediũ per assisam, imo tantum erit locus supplicationi, vt factum suum corriget et emendet, quod si non fecerit, sufficiat ei pro pena quod deum expectet vltorem, qui dicit, mihi vindictam et ego retribuam, nisi sit qui dicat quod vniuersitas regni et Barronagium suũ facere possit et debeat in Curia ipsius regis, sed si alius ex facto et disseisina principis statim vel ex post facto in seisinam institerit, quamuis talis incidat in assisam et in penam vel tantum ad restitutionem secundũ quod seisina ad ipsũ peruenerit statim vel

ex poſt facto ſine principe tamen conueniri non poterit per aſſiſam, quia licet quodamodo diſſeiſinam fecerit tamen non per ſe ſed cum alio. s. cum principe et ita quod ſine eo reſpõdere non potuit, et ita non procedit aſſiſa. Indirecte tamen et quaſi ex incidente et ſine breui comprehendi poterit perſona principis ad hoc quod factum ſuum emendet, vel in pſonam ſuam redũdabit iniuria manifeſte, vt ecce. Eſto quod impetretur aſſiſa tantum ſuper eum ad quem res trãſlata eſt ſine principe, et qui tenetur ad reſtitutionem et ad penam, vel ad minus ad reſtitutionem, et ipſe reſpondeat quod ſine principe qui fecit iniuriam per ſe vel per ſuos reſpondere non debeat, quia ipſe princeps per ſe fecit iniuriam vel ipſi duo inſimul, extunc erit factum et iniuria in manu domini regis, qui dici debet in facto quaſi warrantus, et quod tunc poterit ſi warrantus voluerit factum ſuum emendare quaſi a lege compulſus, et quam in perſona ſua cum ſit ei ſubmiſſus debet firmiter obſeruare. So that by Bracton it appeareth that no accion lyeth againſt the kinge but the party greeued is dryuen to ſue to the king by petition. But the reaſõ why that aduowſons ſhould paſſe in the kings caſe by the order of the common law though it were not expreſſed in the graunt was this I ſuppoſe, becauſe that landes or tenements were not then compted as thinges that touched the roiall eſtate or that made the kynges crowne lyke as Libertes or fraunchiſes did. For the one a comon perſone might haue aſwell as the kinge, but the other none myght haue but the kinge or ſuch as were able to ſhewe his grant therof, and therfore ſayth Bracton in his firſt booke vnder the title que res dari poſſit that for landes currit tempus contra regem ſicut contra quamlibet priuatam perſonam Which is as much to ſay, that if the king had right to any ſuch landes or tenementes and had ſurceſſed his tyme ſo longe, that it exceded the time of limitation in a writte of right, his highnes had loſt then his right for euer. And herewith agreeth Britton fo. 29. But that is (ſayth Britton) of landes, parcell of the kinges eſchetes or purchaſed

landes

landes, and not of the auncient demeasnes of his crowne, for of those nullum currit ei tempus, if hee haue any ryght to demaund them. So that by Britton this reason wil not serue for lands parcell of the Crown. Ideo quere verá rationem. Howbeeit since this statut made, what lands soeuer they bee those thinges that are comprised in this statute passe not without making expresse mẽcion therof. Hetherto wee haue spoken of the reason why at the common law aduowsons should passe by graunt of the manour without beeing named, now let vs see howe since the making of this statute it shal likewise passe by grant of the manour wõut being expressely named and how not. H.5. E.3. fo.66. And if the king render vp to him that was in ward, at full age his lands, or to a bishop his temporalties, although he make no mencion of knights fees or auowsõs, yet al passe therewith, for lyke as ẏ kings seisin in such case is by these woords omnia terras et teneméta, without speking of fees or auowsons, euen so beeing sued out of his hands by these woords, omnia terras & teneméta, fees and auowsons doo passe wõut making any mencion thereof. And Liuery. 30 T.16. E.3. Where after the death of an ydeot, the king rẽdred again the landes to the heire not making mention of fees or auowsons, & yet hee had them. And likewise. H.41. E.3.f.5. T.44. E.3.f.25. the king graunted ẏ temporalties to one that was elect bishop before he was consecrat & adiudged ẏ fees & auowsons passed without making any mẽciõ therof, & yet at ẏ time of ẏ grant he was not bishop, for he lacked consecration. And the reason in all these cases is, for ẏ the king was but seised in an other bodies right & by his liuery he geueth nothing vnto them but only restoreth thẽ to their right they had before. Like law should it apere to be by Finchden H.29. E.3.7. If auowsõ of a church be appẽdant to a Priory which Priory is seised into ẏ kigs hãds by reasõ ẏ an aliẽ is patrõ of it, & afterward ẏ kig dimiseth

the ſaid Priory cum pertineñ, not making mention of thauowſon vnto the ſayd Prior yelding a rent, to haue and to hold the ſame during the warre. And his reaſon is this, for that the right and free hold in this caſe remayneth ſtill in ỹ Priour notwithſtanding any ſuch ſeiſin, and the kyng is but to haue an annuel profyt thereof, and no right, but if any bee to ſue dower or liuery with a particion out of ỹ kynges hands they by that cannot haue thauowſon yf menciõ bee not thereof made, no more than they can that claym by Graunt and yet the king rẽdreth them the thing in reſpect of a right before, as hee dooth in the other caſes. But what then? they claime not the whole land that is in the kings hands but onely parcell thereof, and then thauowſon euer more abideth with that that remaines, if expreſſe mencyon bee not made thereof, and ſo not like the caſes before where the king makes liuerie of the whole. And this caſe appeareth alſo in the ſaid booke of. Y. 5. E. 3. f. 67. And note that in al caſes were the king ſeiſeth a thing as his own proper right as hee dooth in the caſe of wardes, eſchete, & ſuch like, there nothing paſſeth by graunt of the appurtenaunce yf expreſſe mencion bee not made of the thing that is appurtenant by name: and therefore the caſe was. Y. 29. E. 3 f. 7. That where auowſon of a churche did belong to a Priory which Priorie was ſeiſed into ỹ kings hands ratione guerre, and letten agayn to ferm for a rent to the Prior, and afterward the king graunted away the patronage of ỹ Priory to a man and to his heires, and the cuſtody (during the warre) of the Priorie with all that belongeth to the ſame of the rent reſerued with all the profyts of the priorie ỹ the king had ſeiſed, and yet thought that thauowſon paſſed not, for that it was not named. But if there bee woordes in the kings graunt that doo amount to aſmuch as therpreſſe naming of the thing or conteruaile as much, then ỹ thing paſſeth as farre forth as if it were expreſſely named. And

therefore

therefore if a manner to the which auowson is appendant bee in the kings hands by eschete or purchase and the king geeueth the manor as fully and as wholly as such a one held the same before the eschete or purchase, in this case the auowson passeth, and so it is agreed in.43. E.3.fol.22. And learn for asmuch as this statut maketh mencion but of.iij. things, that is to say, knights fees, auowsons of churches & dowers, whether in such case any other thing then auowson which is appendant or appurtenaunt should passe by woords cum pertiñ without naming of it. For it appereth in 18.H.6.12. that where a Leete was within a town & the king graunted the town cum pertiñ not naming the Leete and it was thought the Lete should passe thereby. But ỹ reason was there because it was parcel of the town, and ỹ that is parcel or incidēt to an other thing, passeth by grāt of the thing without making any mencion therof. And therefore if the king bee seised of a corody by reason that hee is a patron of a priorie, & graunteth away the patronage wōout making any mencion of the Corody, yet the grauntee shall haue the Corody: and so it is iudged 26.li.ass.P.53. and yet the kings grauntee of a ward shall not haue Gard per cause de gard if erpresse mēcion bee not made therof Card. 70.M.35.H.6. And so it is if one bee to haue restitucion of ỹ auowson vna cum exit' and the church becommeth void, and the king makes him restitucion with the meane issues and profyts taken, yet hee shall not haue this auoidaunce that is so fallen without erpresse mencion bee made therof in his restitucion, as appeareth in P.18.E.3.21.P.24.E.3 29.M.39.E.3.21. & P.46.E.3.Grāt.60. And yet if the kyng bee seised of auowson and the church becommeth voyd and hee graunteth the auowson away, his highnesse shall not now present nor take the benefyt of the auoidance, as appeareth in T.9.E.3.26. Therefore enquire what the reason is of these diuersities and what is ment by these woords in

the.

the ſtatut Dotibus cum acciderit ad predictū manerium vel terram ptiñ. For as I ſuppoſe thoſe woordes ſerue to none other purpoſe but where the king is to aſſigne dower, and he granteth ouer the maner Durante minore etate of the heir ỹ is in ward to an other, this patentee ſhall not haue ỹ aſſignement of dower if mention bee not made therof in his patent. Howbeit learn & enquire what is the true meaning of the ſaid woordes.

Le roy auera chattels forfaits & an, iour et waſt. Cap.16.

ITem rex habebit oĩa catalla felonum damnatorū et fugitiuorum vbicunq; fuerint inuenta et ſi ipſi habeant liberū tenemētū tunc illud ſtatim capietur in manum dñi regis, & rex habebit omnes exitus eiuſdē per vnū annū & vnū diē, et teñtū illud vaſtabitur et deſtruetur de domibus, boſcis & gardinis, et alijs quibuſcunq; ad predictū tenementum ſpectantibus, exceptis hominibus quorundā priuilegiatorū inde per regem. Et poſtquam dñs rex habuerit annum diem, & vaſtū, tunc reddatur tenementū illud capitali domino feodi illius niſi prius faciat finē pro anno die & vaſto de conſuetud' tamen dicitur quod poſt annum et diem terre et teñta felonū in Gloc reddentur & reuertentur proximo heredi, cui debuerunt deſcendiſſe ſi felonia facta non fuiſſet. Et in Kent in Gauelkind the father to the bough, the ſonne to the plough. Ibidē omnes heredes maſculi participabunt hereditatem eorū, et ſimiliter femine: ſed femine non participabūt cū maſculis. Et mulier habebit poſt mortē viri medietatē ꝓ dote ſua, Et ſi mulier fornicetur in viduitate perdet dotem ſuam, vel ſi ſit deſponſata viro. Before this ſtatute Glanuill did write in this wiſe in his.vii.booke ca.17.f.59.vnder the tytle De vltimis heredibus. Notandum quod ſi quis de felonia conuictus fuerit, vel confeſſus in curia & de domino rege tenuerit in capite, tunc tam terra quām oēs res mobiles ſue et catalla penes quemcūq; inueniantur, ad opus domini regis capiētur ſine omni recuperatione alicuius heredis ſui, ſi autē de alio quā de rege tenuerit is qui ytlagat' eſt vel de felo-

de felonia conuictus tunc quoque omnes res eius mobiles Regis erunt. Terra autem per vnum annum permanebit in manu domini regis. Elapso autem anno, terra eadem ad rectum dominum scilicet ad ipsum de cuius feodo est reuertetur, veruntamen cum domorum subuersione et arborum extirpatione. Et generaliter quotiescunque aliquis aliquid fecerit vel dixerit in curia propter quod per iudicium curię exheredatus fuerit, hereditas eius ad dominum feodi de quo illa tenetur tanquam Escaeta solet reuerti. Forisfactura autem filij et heredis alicuius patrem non exheredat, neque fratrem neque alium quam se ipsum. Preterea si de furto fuerit aliquis condemnatus, res eius mobiles, et omnia cattalla sua vicecomiti prouincię remanere solent, terrá autem si quę fuerit dominus feodi recuperabit statim non expecta to Anno. By this it should appeare that in Glanuilles tyme, for theft onely the shirif should haue the goods ỹ were forfait, and that as it should seeme to his own vse, and not to the kings. For hee sayeth, the lords in that case should recouer their eschetes before the yeare, day, and the wast. Howbeit this statut made since that time geeues al felons goods to the king without any exception. And hereuppon it is to bee seene first what is comprised in this woordes cattalla. Cattalla is a generall woord which comprehends as well Chattels mouable as not moueable. For leases for terme of yeares are within this woord cattalla, as appeareth by Bracton in his second booke in the title of Forfayture of felons saying quod terminum annorum erit domini regis, vt cattalla. Quia accipit terminum ad similitudinē cattallorum. And therewith agreeth the booke in M.39. H. 6.35. Also vnder this woord cattalla is taken the issues and profits of lands and tenements of them that fly for felony vntill such time as they bee attainted or acquited. And lyke wyse of the Landes and tenements of clerkes conuycte, vntyll suche tyme as hee hath hys purgacyon, I mean landes and tenementes as well of their wyues right as of

their

their owne right, & so is the booke Forfeiture.16. & Corone 374.P.4.E.2.& 3.E.3.Corone.356. Also vnder this woord catalla are taken the emblements ỳ were growing vppõ ỳ ground at ỳ time ỳ the forfaiture of the goodes first began to take place, as appereth Corone.344. 3.E.3. Also vnder this woord catalla is cõprised a right of accion to goods, as where goods be taken away wrongfully frõ the felon, M 6.H.7.f.9. or wher one is endetted to ỳ felon by obligation M 19.H 6.f.47.or is accõptable to ỳ felon for any receits or otherwise, and this appeereth P.28.E.3.f.92. & 50. Ass.2.& Trauers 33.A.32.li.ass. Also vnder this woord catalla, is takẽ sometimes goods wherin the felon hath no property, as if a man deliuer money out of a bagg, or corne out of a sacke to one to keepe which is afterwards attainted of felony, ỳ money or corne in this case is forfaited. Like law is it if a thief ỳ steales goods seuerally frõ sundry persones & afterward is attainted for one of ỳ said felonies, by this one attainder the goods ỳ are stollen frõ ỳ other bee also forfaited to ỳ king.A.3.E.3.Corone.317.323.f.334. Like lawe is it if one steal goods & before hee be attainted therof hee killeth him selfe A.3.E.3.Corone.318.f.319.or dieth in prison or abiures the realme confessing an other felonye then that for ỳ which he fled to the church, in these cases hee forfaiteth the goods ỳ hee did steal Corone.379.380.H.12.E.2. 3.E.3.Corone.162. H.8.E.[illegible].f.11.M.44.E.3.f.44.26.le.ass.p.32. So is if the wife kil her husband, shee forfaits the goods of her husband. Corone.423. 8.E.2.It' cancẽ. Then let vs see further what may be said vpõ this woord Felonum. If thoffence that is committed be felony, then is it properly wĩn the compas of this woord Felonũ, & hee that committes the offence shalbe said Felon. Notwithstanding that hee therefore shall not suffer death: as in a case where one killeth an other se defendendo Corone.116. T.16.E.3.or by misaduẽture Corone.302. 43.E.3.this offence is felony, & hee ỳ cõmittes it shal forfait his goods notwŝtanding ỳ hee obtain

pardone

pardon of life. For it was at ỹ kings pleasure to graunt pardon or not. But so shall not hee that kylleth one that would robbe him in his house, or the officer that killeth one that will not bee rested, nor hee that killeth any thing not yet born, as a childe in his mothers belly, nor the parson that is straught that killeth another in his madnesse, 12. E. 3. Dovver 183. & forfaiture. 53. For in al these cases it is not felony. The woords bee further, Damnatorum & fugitiuorum. Sometimes the kyng shall haue hys chatels, although hee bee not condemned of the felony as if a man be arested for felony and afterwards breaks the arrest and the other ere hee can take him agayn kylles him, in this case hee that is killed shall forfait his goods, and yet hee was neuer attainted of thoffence. Like law is it if hee bee killed in the first arrest where hee woold not bee arrested. And this arpeareth in 3. E. 3 Coroñ. 312. &. 290. Howbeit since that time there was a statut made Anno. 34. E. 3. capit. 12. Which seemes to alter the law in these cases yf it bee not that you will say peraduenture that hee shall forfait them quia fugam fecit. Ideo quere. Hee that is felode se shal forfait his goods and yet hee was neuer attainted. Like law is before, of the clerk conuict. And so is it of such as stand mute H. 34. E. 3. Eschete P. 10. or challenge aboue the number of two enquests. Then further, this woord fugitiuorũ is taken such as flee or withdraw themselues for the felony that they bee endited, appealed or accused of, for that makes a great presumption against them, as Bracton sayeth in his second booke vnder the title Ad quę restituatur vtlagatus, and for that presumption sake shal the vtlary prede whether hee bee gilty of the felony or not. And also sayeth hee in the sayd booke quod vtlagati de felonia gerũt caput lupinum, & secũ suũ portant iudicium, ita quod sine iudiciali inquisitione pereunt, quia merito sine lege pereunt, qui secundum legem viuere recusauerunt, et hoc ita si in capiendo

do fugiant vel se defendant. Si autem viui capti fuerint vel se reddiderīt, vita illorū et mors est in manu domini Regis, etq̄ taliter captū interfecerit, respondebit pro eo sicut pro alio nisi sit in locis vbi consuetudo se habeat in contrarium, videlicet in coīn Hereford et Glouc̄.

And in an other place hee saith, Quod nullum crimen maius inobedientia, quia pro contemptu et inobedientia poterit quis excommunicari, sicut pro quolibet peccato mortali, cum omnes subditi debeant esse Regi tanquam precellenti, maxime in honestis, et ducibus eius tanquam ab eo missis, et sic concordat lex diuina aliquantulum cum humana. **And also sayth** quod vtlagatus de felonia forisfacit patriam et amicos, forisfacit quę pacis sunt, forisfacit quę legis sunt, forisfacit quę iuris sunt, et possessionis, et forisfacit actionem ante vtlagariam sibi datam. **Thus by the way, haue I noted vnto you suche thinges out of** Bracton, **as mee seemeth bee notable, and make somewhat for thys purpose: Although I needed not to haue gone so farre as to outlawrse for exposition of thys woorde** fugitiuorum, **but myght haue rested at the flyeng. For if one flye for the death of a man, and this presented beefore the Coroner, hee shall forfeit all his goods that hee had the daye of that presentment or at any tyme synce, till hee bee acquited of the said death.** Forfeiture. 35. **A.3. E. 3. And notwithstandyng that an enquest vppon his arrainment dooth afterward acquyte him, and also fynd that hee did not fly, yet his goods remayne still forfait, as it appeareth 22. lib. Ass. p. 96. et** Forfaiture. 29. & 32. **M. 5. H. 4.** Coron. 296. **3. Edw. 3. Lyke lawe is it where one arrayned of Felony beefore Iustyces is founde not gyltye of the Felonye, Howbeeit yt is founde that hee withdrewe hymselfe for the sayde felonye, nowe shall hee forfayt hys goodes but no profytes of landes as hee shall doo in the other case where it ys founde beefore the Coroner, For when the forfayture**

shall

ſhall haue no further relacion, but to the day of the preſentment and not to ỹ day of the flyenge, then when at the ſame day hee is acquited of the felonye, then is the kynges tytle gone as to the landes and ſo conſequentlye gone as to the iſſues. And this appeareth .3. Edwarde.3. Coron. 244. Alſo there is an other maner of flyinge, for the which a manne ſhall forfait his goods, and that is where in appeale or enditement of felony, the party that is appealed or endited will not appeare, but ſuffer the erigent to bee awarded againſt him, hee therby forfaiteth hys goods and the profites of his landes, which hee had the daye of therigent awarded or at any tyme after. And notwythſtandynge that hee afterwards happen to bee acquyted of the ſayde felony, yet the forfaiture remaines, For when hee tarrieth ỹ awardinge of therigent it appeareth of recorde that hee hath withdrawen hymſelfe, and thys you ſhall finde in twenty two. Aſſ. 81. and 41. aſſiſe. 3. Howbeit herein is there heede to bee taken leſt there bee errour in the awardynge of the ſayde Erigent: For if there bee, hee ſhall then forfait nothinge, as if the erigent bee awarded againſte the acceſſorye beefore it bee awarded againſt the principall, or before the principall bee attaynted, or if an erigent bee awarded againſt one that hath a charter of pardon for the felony (of elder date than is the awardynge of therigent) and hath founde ſuerty accordynge to the ſtatute and the ſame retourned into the chancery before therigent awarded: For in theſe caſes hee ſhal auoyde the forfaiture vppon the matter ſhewed Pl. 43. E. 3. 18. Cõtrary lawe it is if after the erigent awarded the appelle doo abate for inſufficyency, or for that that hee that is outlawed was impriſoned meane betweene the awardynge of the erigent and the outlawrye pronounced.

For

For in that case if he reuerse the vtlary, yet his goods remain still forfait. Howbeit if he were empʒisoned at ỹ time of the erigent awarded otherwise it is, & this appereth Forfaiture. 19. H. 19. E. 3. & 31. H 30. Hy. 6. Also it is to be noted ỹ one may flye for felonye and yet hee shal forfait nothing, as where one is arrested for suspicion of felony & escapes, yet for thys hee shall not forfait his goods if hee were not takē with the maner or at the sute of the partie or endited of ỹ same as it appeareth. 42. li. All. 5. Quere if hee bee ēdited afterwarde whether hee shall then forfait them or not. Also an accessory after the felony cōmitted shal forfait nothinge vppon a Fugam fecit. Otherwise it is of accessories before the felony committed, as it appeareth H. 4. Hy. 7. 18. But he ỹ withdraweth him self but for Petit larcenie shall forfaite his goods, as it appeareth 8. E. 2. Coron. 406. tamen quere. And note for a general rule that the townеship where the goods of felones or fugitiues be founde shal alwayes aunswere ỹ king of them, & the shiriue, of the issues and profites of the lands: and therefore the township may seise them for the kinge. For it is no plee for them to say they were not deliuered vnto them. And this appeareth in Fitzherbert, in ỹ title of Corone 390. 366. 300. 347. 290. 398. and 36. Hy. 6. 25. 22 li. all. p. 81. Hy. 11. Hy. 4. f. 41. Hy. 13. Hy. 4. f. 13. But at what time ỹ goods of a felone or fugitiue shalbee seised it is further to be seene and how the attainder shall haue relation. When it is founde by ēquest before the corroners quod fugam fecit, by and by the sheriue shall seisie his lands into the kynges handes by woorde onely without taking any enquest for the same purpose, and also shall seise all his goods into the kinges handes, and take an enquest as well of free menne as of villeins to appraise them and cause the praise to be enrolled to the corroners and to deliuer them to the tounеship to make aunswere thereof to ỹ kynge, And this appeareth 22. lib. all. Pl. 96. And herewith agreeth the statute of Corroners

ners and also Britton.fo.4. Where you shall see this matter set forth more fully. And in M.43.E.3.24. it is sayd ỹ the kings minister may seise the goods of a felon before attainder, and if the party fynd suerty then hee to leaue them in the custody of the party or els in the neighbors custody. For the said minister ought not to cary thē away with him, and T.7.H.4.47. Hull. sayeth that if one be endited of felony, yet till hee bee attainted his goods shall not be remoued out of his house, but in the mean time shalbee in hys neighbors keeping and hee to bee found of the same. And in the Register ther is a writ quod tenta et bona talit' capta videantur, imbreuient' et saluo custodiātur p balliuū ipsius capti qui securitaté regi inuenient ei respondend' si &c. saluis inde ipsi capto et familie sue necessarijs quā diu fuerit in prisona. And so is Britton.folio.17. Howbeit now by ỹ statut made in the first yere of king R.3.ca.3. it is ordeyned ỹ none shal seise the goods of any persō arrested or imprisoned before that they bee attainted, or that the goods bee otherwise forfaited, vpō pain to pay the double value there of. This statut extendeth not to any other but to such as be in prison: For by the statut de proditionibus 25.E.3.ca.14. If one bee endited of felony which is not imprisoned, the sheriue at the second Cape shall seise his goods, & yet they bee not at that time forfaited. And also the statut of R.3 dooth not extend to lands but only to goods. Then for the relacion, as for the goods it hath no relacion but only frō the day that ỹ forfaiture is presented or verdit geeuen, and therefore it is sayd in Forfaiture.30.H.33.E.3. that if hee sell them before hee bee attainted the sale is good, but for lands it hath relacion to the day of ỹ felony committed, bee it that the attainder be by verdit or vtlary as it appeareth M.38.E 3.31.et.T.30.H.6.fo.5. or bee it ỹ hee bee attainted without proces of law, as in the cases aboue remembred where hee is kylled in ỹ flying, as appereth Corone.289.A.3.E.3. And note that if thattainder and the office found of his lands be

both wtin the yere of the felony first cõmitted ỹ it shal haue no relacõ for that yeres profits, otherwise it is if it be after ỹ yere, as appereth in Corone. 85. A. 3. E. 3. This boke must be vnderstãd as I take it where the attainder & the office be before any day of paimẽt wtin the yere. The woords of this chapter be further. Et si ipsi habeãt liberũ tenẽtũ tũc illud statim capietur in manũ dñi regis et rex habebit õnes exit' eiusdẽ per vnũ annũ et vnũ diẽ et tenẽtũ illud vastabitur et destruetur de domibus boscis et gardinis et alijs quibuscunq; ad predictũ tenẽtũ spectãtibus: It should appeare by Glanuill in the beginning of this chapter that the cõmon law was as much before the making hereof in all cases of felony sauing for theft, in which the king had no yeare & day. Notwithstanding after Glanuills time the statut of Magna charta was made which saith in the. 22. chapter thereof. Nos non tenebimus terras illorũ qui conuicti fuerint de felonia nisi per vnũ annũ et vnum diem et tunc reddãtur terre ille dñis feodorũ. By this it should seeme this statut doth remitte the wast because it speaketh nothing of it or els peraduenture you will say that this woord Nisi argues and proues ỹ the king before the statut of Magna charta might haue holden it as long as hee would, but to the contrary of that exposition is Glanuil, as it appereth before: And also Bracton which wrote somewhat after his time: For by Bracton in his second booke it appeareth ỹ before the making of the sayd statut of Magna charta the king had nothing els but the wast, & to thentent he should remitte the wast, the yere & day was afterward geeuen to the king: For these be his woords in ỹ title of Utlary. Si vero terrã liberam habuerint vtlagati, statim capienda est in manum domini regis et tenenda per vnum annum et vnum diem, ad capitales dominos post terminum illum reuersura si de alio tenuerit quam de rege, si autem de rege tunc erit Escaeta ipsius regis, et hoc verum est quod per talem terminum remanebit in manu domini regis nisi ipse capitalis dominus vel alius finem fecerit pro termino regi habendo sed que sit causa quare terra remanebit

bit in manu domini regis, videtur quod talis est, quia reuera cū quis fuerit cōuictus de aliqua felonia in potestate dñi regis erit prosternandi edificia, extirpandi gardina, et arādi prata et quoniā huiusmodi vrgebantur in graue dānū dñorum, p cōmuni vtilitate prouisū fuit quod huiusmodi dura et grauia remanerent, et quod dñs rex propter hoc haberet commoditatē totius terre illius p vnum annum et vnū diē, et sic omnia cū integritate reuerterētur in manus capitaliū dñorū nūc autē petitur vtrū .s. Finis pro termino et similiter p vasto. Et nō video rationē quare, nisi quod terminus bene poterit esse per se sine vasto eo quod fugitiuus et vtlagatus nō solū delinquit erga eū qui sequitur et appellat, sed erga regē cuius pacē infringit contra fidē suā cui tenetur, quia quilibet cum faciat sacramentum, iurat salua fide domini regis.

Thus our autors agree not vpō this yere & day, for Bractō is contrary to Glanuil ỹ wrote before him. Howbeit Brittō which was likewise before the making of this statut of prerogatiua agreeth with Bractō, as it appereth in the booke fo. 14. adding further ỹ the king shal not haue the yeare & day of lād ỹ is holden onely for terme of life or yeres or by fresh disseisin or in fee ferme or in morgage. And so is Bracton also therwith agreeing in the second boke but now sins his time this statut of prerogatiua was made, which geues the kyng as you may perceiue both the yeare day & waste. And first hee sayeth quod rex habebit ōnes exitus eiusdē per vnū ānū et vnū diē. By this it should appere ỹ the king should not haue the issues of the land but by a yere & a day, but yet it is clere ỹ he shal haue ỹ issues also frō the time of ỹ felony doon vntil the time his highnes hath had the yere day & waste, & not the lord (allowing ỹ that is to bee allowed for kynding of the prisoner) for it can not bee intended that the lord should haue the mean profyts, because the land shalbe deliuered vnto him without profyt, that is to say wasted & destroyed. And therwith agreeth the booke in Corone. 290. A. 3. E. 3. & P. 49. E. 3. f. 11. And there it appereth that yf an office bee found 20. yeres after the attainder the king shall

haue the profyts from the time of the felony cõmitted vntil the yeare and day nert after the office found. For though the lord be entitled to haue theschete, yet the kings title for the yeare day and waſt goeth before the lords: For ẏ woordes bee Poſtquam dominus rex habuerit annum diẽ & vaſtum tunc reddatur tenementum illud capitali domino. Alſo bythis woord Reddatur it ſeemes ẏ lord can not enter in to his eſchete after office found, but is driuen to ſue an ouſter le main for the ſame out of the kings hands, as it appereth in Trauers. 48. A. 8. E. 2. but if a ſtraũger abate before office, the lord ſhal haue a writ of eſchete againſt him & recouer, yet that notwithſtanding when an office ſhalbe foũd afterward the king may ſeiſe for the yere, day & waſt, and ſhalbe aunſwered of the meſne profyts like as it is when the kings tenaunt in chiefe dieth his heire of full age an eſtranger abateth, the heire may haue aſſiſe of mordaũceſter if hee wil, & recouer againſt the abator, & yet vpon an office found afterward the king ſhall ſeiſe for primer ſeaſon & bee aunſwered of al the mean profits, and the heire driuen to ſue liuery. Further then let vs ſee in what caſes the king ſhal haue annum, diem & vaſtum and in what not. The king ſhall not haue annũ, diẽ et vaſtũ of clerks cõuict after verdit, becauſe he forfaits no lãd Corone 332. A. 3. E. 3 Like law is it of lãds in Gauelkind where ẏ father is hãged, but otherwiſe it is if he be outlawed or abiured for felony for there the kyng ſhall haue ẏ yere, day & waſt, and this appereth in Preſcription. P. 50. A. 8. E. 2. If ẏ huſbãd be attainted of felony the king ſhal haue ẏ yere, day & waſt of the lãds of ẏ wife, & yet in ẏ caſe ẏ lords ſhal not haue their eſchetes. But what then? ẏ huſbãd might haue doon waſt & the wife had had no remedy for the ſame, and by the ſame reaſõ the king may do as much, & this appereth in Corone P. 327. A. 3. E. 3. And alſo in Bracton in his ſecõd booke. And alſo it ſhould there appeare ẏ the wife is driuen to ſue an ouſter le main after ẏ death of her huſband. If one be arreſ-

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ted for felony & breakes the arreſt, ſo ỹ in ỹ purſuit of him hee is killed beecauſe hee woold not otherwiſe be taken, ỹ king in this caſe ſhal haue ỹ yere, day & waſt, as it apereth Corone.312. & 290. A.3.E.3. If a man commit felony & hath his charter of pardon, yet the king ſhal haue the yere, daye & waſt & ỹ lords their eſchetes, & this apeareth Corone.308 A.3.E.3. for the pardon doth not reſtore him but to the law. For though the king woold pardon him with woordes of reſtitution, yet his grace coold not thereby reſtore him to ỹ lands helden of other. And note ỹ the king ſhall haue the yere, day & waſt of landes in ancient demeſne if it ſo bee ỹ the tenant might haue ſold the ſaid lands againſt the will of the lord, as it appeareth Corone.310. A.3.Ed.3. and that notwithſtanding ỹ the ſaid lands were alwaies vſed to be ſurrendred by the rod & to paſſe by ſurrender. The woords of the ſtatute be further. Exceptis hominibus quorũdã priui legiatorũ inde per regẽ. That is as muche to ſaye except ſuch as haue Bona & catalla felonũ by the kinges graunt for a man cannot preſcribe to haue Bona & catalla felonũ, as appeareth T.46.E.3.f.16. P.1.H.7.f.23.M.8.H.4.fo.2. Nor none may haue this prerogatiue of yere, daye & waſt, but only the king although hee woold claime it by charter from the king or otherwiſe, as it appereth Corone.310.A.3. E.3. But when ỹ king is ſeiſed of it hee may cõmit it ouer as appeereth by Bracton in his ſaid.2.book. But if the land wherof the king ſhoold haue the yere, day & waſt be vnder the yerely value of.iii.s.iiii.d. it is vſed to be remitted for ỹ ſmalneſſe & ſimpleneſſe of the thing, as appeereth Corone 327.A 3.E 3.for it ſhoold coſt more the ſuing of it out of the kings hands than the thing is woorth. And note the cuſtõe of Gloc̃ compriſed in this ſtatut, whereby it ſhoold appere that notwithſtanding any ſuch cuſtome yet ỹ king ſhoold haue annum & diem but not ſo of landes in gauelkind as I haue ſaid beefore.

DYuers other Prerogatiues there bee, whiche the king hath by the order of the common lawe that bee not within this statute compriſed, a greate parte whereof vnder the title of Prerogatiue maiſter Fitzherbert hath moſt diligently noted in his greate Abrigement, & ſo well placed there, that I doo of purpoſe omit to reherſe them heere. The reſt woold require ſo long a ſerch that vnleſſe I had gathered and noted them already (as I haue not doon in deede) I ſhoold bee faine to peruſe the whole body of the common lawes for the knowledge thereof, whereunto time ſerueth mee not, wherfore at this tyme myne intēt is not to medle with them.

¶ Proces to bee sued after the death of the kings tenaunt in chicfe.

Cap. xvij.

By a statute made in the. 33. yere of the late king of moste famous memory H.8. the. 22. chap. it is ordained & prouyded among other things, that no person or persõs hauing lands or tenemẽts aboue the yerely value of fiue poundes shal haue or sue any lyuerye beefore inquisition or office founde before theschetour or other commissioner or commissioners by vertue of the kings writte or commission to bee directed out of the kinges chauncery or other courts hauing auctority to make such writes or cõmissiõs for suing of lineries, which writs or commissions shall not passe out of the chãcery nor any other courtes but by a warrant or bylle to bee assigned & subscribed with the hands & names of ỹ maister of the kings wards and liueryes, surucior of his liueryes, or the attourne and receiuor of the court of the wards and lyueries, or three, two, or one of them, to bee directed and deliuered to ỹ chaũcellor of England or to any other chaũceller or officer hauing power to award such writs: And if the lands or tenements wherof any inquisition is to be had by vertue of any such writte or commission exceede ỹ yerely value of fyue pounds that then such as sue for such writs & commissions shal pay for the seal and writing thereof such fees as hath been accustomed. And if the said lands & tenemẽts wherof any such inquisitions & offices are to be found by vertue of any such writte or cõmission excede not ỹ sayd yerely value of v.li. then such as shall sue for such writs or commissiõs shal pay for the seal of euery of them. vi. pence, and for the writing. vi. d. and not aboue. This statut dooth

not set foorth the name of the writ or cõmission that shalbe sued, howbeit these woords ẏ follow, that is to say: (for suing of liueryes) do somwhat opẽ the minds of the makers of this statute, & declare ẏ theire meaning was of the diem clausit & such other writs or cõmissions as serue for ẏ purpose, & not of euery write or cõmissiõ, for so might an office bee found by a wrong write or commission, whiche shoold want matter or be otherwise insufficient to make liueries. But learn & enquire if after a good write or comissiõ sued foorth, the office that is found is not sufficient, whether ẏ party shal haue his liuery or not without suing a meli⁹ inquirendũ, or a new office because ẏ some perauenture wyll say ẏ the woords of the statut bee performed ẏ is to wite an office or inquisition is found. But to that it may be answered & saide that it is no office when it is insufficient at least wise toward the party ẏ shoold sue liuery therupon, although it bee a good office toward the king if any thing therin conteined bee for his benefit. And learne also if the kings tenant dye seised of lands in dyuers counties whether by force of this statut he shal cause an inquisition or office to bee found in euery county where the lãds lye, for so is it vsed to be don vpõ al general liueries, & he ẏ sueth hys general liuery otherwise missueth the same, & is an intruder vpon the kings possessiõ: howbeit perauẽture you wil say ẏ if the lãds excede ẏ yerely value of .xx. marks he must sue a special liuery & not a generall, & therfore it makes no matter for the inquisitiõ or office, & ẏ the woordz of ẏ statut wil bear it wel enough if there be but one office foũd. But as to ẏ it may be said ẏ the meaning of ẏ statut was not so, for the king can neuer be fully enformed of his title vnlesse ther be an office foũd in euery shire, & also by fyndoing of generall offices one record may be better for the king then an other wherof his grace may take auãtage, for the best shall be takẽ for the king. Thus it apereth by statut how that of

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lands aboue ỹ yerely value of v.li. inquisitiõ must be made & an office found after the death of the kings tenant before liuery can be had: & that must be by a writte of diem clausit extremũ, for that is the proper writte that is to bee sued for that purpose if any suit bee made within the yere after the kings tenants death, or a speciall commission in the nature of the writte of diem clausit. For vpon a general commissiõ to enquire generally of all wardes no particuler yson can haue liuery. And if hee tarry till after the yere, then he can not pursue any of these, but for his remedy must sue a writ called Mandamus or a commissiõ in nature of that writte, & thereupõ to cause an office to bee found & so to haue liuery: But if an office bee once found by diem clausit & the heire dyeth in the kings ward, his heire must sue Deuenerunt & no Mandamus although it bee after ỹ yere of ỹ death of him that dyed in ward, & so is the rule in ỹ register. Somtimes it happeneth that after deliuery of the writte of comission & before office found the eschetour dyeth or is remoued frõ his office, in which case then the proces ỹ is awarded to his successor is a writ called Datur nobis intelligi, but if office bee found before his death or remouing, which office is not returned, then shal there be a certiorare awarded to his executors to returne the same. For it is a matter of record as soon as ỹ iurors haue put their seals vnto it, notwthstãding it be not returned. And note ỹ thawarding of this writte of diẽ clausit or special cõmission is peremptory to him ỹ sueth for it. For if he leese it or be taken frõ him wt fore he geats no moe writs or cõmissiõs for ỹ landes in ỹ county & thys appereth in the new Natura breuiũ fo.253.c. Howbeit P.14. E.4.f.5. it is touched by the way ỹ in suche cases he should haue a new writ. ideo quere. But after office once foũd by a diẽ clausit or special cõmissiõ as wel the king & party therby are bound as euery other strãger: for so much lands as are cõprised within the office, & neither the king ne ỹ par-

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tye nor any other shal haue any mo writs or commissiõs to enquire any further of these lands, except it be in such cases as I shal hereafter recite, for so the law shoold never haue end, but new heires might bee found euery day by office which were inconuenient and the king shoold not know to whom to make liuery, & this appeareth. 14.E.4.5.& 2.H.7.f.12. 4.H.4.fo.15. But where after office found it is surmised for the king that his highnes hath a better tytle than was found for him by the first office, whether the matter surmised may stand with the matter founde by the first office or not, yea although it bee more contrariaunt or repugnãt it is not material: But in such cases a new writ or cõmission shalbee awarded. As take the case to bee this. By the first office it is founde the kinges tenaunt in chiefe dyed seised his heire wythin age where in deede hee dyed without heir so ỹ thereby the lands ought to haue escheted to the king. Or that hee was tenaunt in taile & dyed without yssue of his body, whereby the landes ought to haue reuerted vnto the king, in these cases the court shal award a new writ or cõmissiõ for ỹ king. Like law is it where the daughter is found heire by office & afterwarde the sonne is borne. Or where there is but one daughter found heire by office where there ought to haue beene two founde heires. Or if by the first office one is found heire of full age which is not heire in deede, but an other is heir which is wõn age; In all these cases there shalbe a new write or commission awarded Causa qua supra, as it may appere Liuery. 28.T. 12.R.2. 14.E.4.f.5. & 4.H.7.f.6.& 30.li.ass.28. yea & a more stronger case as it shoold appere in the new Natura breuiũ.f.261.& 262. that is to say, where ỹ king was to haue no benefite at all more then hee had by the firste office, & yet a new commission was awarded, & therefore the case was there, the second brother was found heire by the first office & of full age, now the eldest had a commission beeing also of full age to fynd him heire, & thereupon had his liuery

uery. So is it where.2. bee found daughters & heires to one man of certein lãds where in deede parcel of the said land was geeuen to one of the said.2. daughters in frank mariage, now shee that claimed the frank mariage had a speciall commission to enquire of the same: & yet by that second office the king had no benefite ideo quere. For this Natura breuium seemeth to impugne the bookes beefore rehersed. And like as hee may pray a new writ or commission in the cases aboue rehersed before liuery had, euen so may he doo in the like cases after liuery had if the liuery be a generall liuery, & thereupon as soone as the title is found the kynge shal reseise: but not without a Scire facias because the statute made at Lincolne hath so prouyded as I shall open more fully when I come to that place, & that in all these aforesaid cases a new diem clausit may bee as wel awarded as a new cõmission, as it appereth. an. 29. li. all. p. 30.

¶ What thing shalbe in the king without office or seasure & what not, & where by an office only without any seasure or other proces the king shalbe in possession & where not, & where hee shalbee in possession without an office but not before a seasure, & how the king may bee entitled by any other record as wel as by an office, & where a man may enter as wel vpõ the kings possession as anye other.

Cap. xviii.

By a statute made the.33. yere of the late king of famous memory H.8. the.20. chapter it is amongest other things prouyded that if any person or persones shalbee attainted of high treason by the course of the common lawes or statutes of this realme, that in euery such case euery such attainder by the comon law shalbe of as good strength, valu force & effect as if it had been doon by aucthority of parliament

ment. And the kings maiesty, his heirs and successors shall haue as much benefit & auantage by such attainder as wel of vses, rights, entres, condicions, as possessions, reuercõs remainders & all other things, as if it had been done & declared by auctority of parliament, & shalbe deemed and adiudged in actual & real possession of the lands, tenements, hereditaments, vses, goods, cattels & all other things of the offendors so attainted whiche his highnes ought lawfully to haue & which they so being attainted ought or might lawfully lose & forfet if the attainder had been doon by auctority of parliament wout any office or inquisition to be found of the same, any law, statut or vse of the realme to the contrary therof in any wise notwstãding. This statut makes it clere & without question that in cases of high treason the lãds of him that is attainted are in ỹ king by & by without any office. But for other attainder it remains as it was at the common law, & therfore learn if one which holdeth of the king be attainted of petit treason or felony, whether in this case by thattainder his lands bee in the king without office, & mee seemeth by attainder & death togeether they shoold bee in the king in law, howbeit not in deede, vntill such time his highnes seise them by his officer, or that an office be therof foũd, for by thattainder ỹ lands are forfayted to ỹ king by matter of record, & then whẽ the party dyeth either the freehold must be in suspẽce, or els aiudged in ỹ king in law, for he ỹ was seised hath corrupted his blood & is dead wout heire, & therfore his highnes is become owner therof in law, & a possession in law vested in him of the same lands, which his highnes at his will & pleasure may make a possession in deede as soon as he will take vpõ him knowledge of the said lands and sease them by his officer. And therefore the booke is agreed 9.20.E.4.f.11. that if he that is attainted be seised of auowsõs appẽdãt, as soone as ỹ church becometh void ỹ king may prẽsẽt wout any office

which

which proues ỹ the king by thattainder was patrō before any office foūd or els how could his highnes presēt: & I see no differēce betwene lāds & auowsōs in this case, for auowson is not so trāsitorie toward the king, but ỹ hee may take ỹ presentment thereof at all times whē hee wil, quia nullū tēpus ei occurrit. Howbeit learn what ỹ law wil in this case, for many mē are of ỹ cōtrary opinion. And see in the boke M.4.E.4.22. cōcernig this matter. And so note what is sayd of a possession in law, for as I take it there may bee a possessiō in law in ỹ king as wel as a possessiō in deede, which possessiō in law is euer wōut office or any other mater of record, as whē ỹ possession is cast vpō his highnes by a discēt, reuerter, remaider or eschete or in title of his seignory or prerogatiue, as for wardship, primer seisin or for ỹ custody of ỹ tēporalties of a bishop during ỹ time ỹ the see is vacant: in all these cases wōut any office or other mater of record there is a possessiō in law vested in ỹ kings highnes, ỹ is to say, for ỹ that dooth discēd, reuert, remain or eschete, ỹ freehold is cast vpō him in law as it should be vpō a cōmon persō in ỹ like case, or els ỹ freehold should bee in suspence, which may not bee, T, 9.H.7.2. et 9. P.49.E,3.fo 16. & Estopple 255. M.4.E.2. & of ỹ rest the possessiō in law of a cattel is in his highnes in right of his seignory, which his highnes at his wil & plesure mai make a possessiō i deede by ētre or seasure, H.21.H.7.f.7. M.20.E.4.f.11.&.14.& P. 21.E.4.f.1. T.24.E.3.f.54. M.10.H.4.f.3. but not to make it a possessiō in deede by his grāt, because ther is a statut made in ỹ 18. yere of. Ỹ.6.ca.6. to ỹ let thereof, which puyeth ỹ al letters patēts made of lāds & tenemēts before office foūd & returned, or wīn one month after but only to him ỹ tendeth his trauerse shalbe voyd. This statut extends onely to lāds & tenemēts, therfore of ỹ body of his ward his highnes may make a grāt notwīstādig this statut as me seemeth, for ỹ is neither lād ne tenemēt: also notwīstāding ỹ this statut dooth restrayn ỹ graūting of the lāds & tenements, yet the

seisin

seisin thereof remaines & is in the kyng as it was by order of the cõmon law which is as I said before in his highnes in law although not in deede, vntil such time as he hath made a seisin or an entre by his eschetor, or a grãt thereof, whi she wayeth both to a seasure & a grant, in such cases where the graunt may bee good and not restrayned by statut vntill such time an office thereof bee found: For an office þ entitleth the king to the possession is sufficiẽt by it self with out any seiser or entre of the eschet or to make a possessyon in deede in the kyng, if it bee so that the possession were vacant when the office was found. But if the possession were not vacant, but an other than hee in whose right the kyng seiseth was tenaunt thereof at the tyme of the fynding of the office, then must the king entre or seise by his officer before the possession in deede shalbee iudged in him: P.14.H.7 f.21.15.H.7.f.6.20.E.4.f.11.et.14.&.P.21.E.4.f.1.yea and if his highnes seise not by the space of a yeare & a day after the finding of the office, then may hee not seise without a Scire facias to bee pursued against him that is tenaunt ther of. And of this matter you may see bookes.29.ass.30.32. ass. Trauers.32.50.ass.2.& Gard.105. M.6.R.2. But hereuppon is there a distiction to be made, whether that the king is entitled vnto by office be it a thing manuel and whereof profyt may bee taken foorthwith after the fynding of the office or not. For if it be such a thig as is not manuel & wherof there is no profyte to bee taken foorthwith vntill suche time it falleth, in that case although the kyng bee in possession of the right of the thing, yet is hee not in possession of the profyt thereof vntill such time as his highnes actually by his officer when it falleth taketh and perceiueth the sayd profyt, as for example. The thing the king is entitled vnto by office is no land but auowson, rent or a common, although that the king by this office bee patron of thauowson or owner of the rent or common, and thereby whē the benefyce becometh void may present, or when the rent day

commeth

cõmeth may receiue the rent, or when ẏ comõ is to be take may vse ẏ said comõ, yet if ẏ office that ẽtitleth his highnes be false, & he that was in possession at ẏ time of ẏ office taketh ẏ profyt whẽ it falleth before the kings officer do take it, in this case this taking is no entrusiõ vpõ the kings possessions, for he was neuer seised in deede: wherefore beyng driuẽ to his accion if his highnes bring his Quare impedit or acciõ of trespas, ẏ defendãt may trauerse the office with him in the said accions keping still his possession, & nede not to sue in the chancery for the trauersing of the same. Thys may you see a differẽce betweene a thing ẏ is manuel & a thing not manuel, & what ẏ reason thereof should be lern, for as I suppose the reason of it is no other but as I said before, ẏ when a straũger is tenant at time of ẏ office finding the office maketh no possession in dede in the king before an entrie or a seiser. And then whẽ the kings officer taketh not the profyts when it falleth but suffreth him ẏ was in possession to take it, then was the king neuer seised, but he still remaines in possession that was possessed at the time of the fynding of the office vntil such time as seiser bee made for the king, which can not be doon at al times as it may be of land, but onely at such times as the profyt thereof to be takẽ, that is to say, when it falleth, & that is now past for this time seeing it is al ready taken: & therefore the king in that case is driuen to his actiõ. But quere whether his highnes may be brought in possession in those cases by a clayme or not: And these cases may you see in the bookes of H.17.E. 3.f.10.P.21.E.4.f.1.P. 5.E.4.f.3.H.4.E.3.f.1.& P.14.H.7.f. 21. Like law is it where an office is foũd which dooth not entitle the king to the possessiõ by entry but onely by actiõ, as where it is found ẏ the kings tenant for terme of life or yeres hath doon wast P.14.H.7.f.23.&.25. or being his tenãt in fee simple hath ceased by.ii.yeres P.15.H.7.f.6. or made a feffemẽt by collusiõ cõtrary to the statut of Marlebrige, T.12.H.7.f.1.et.19.et H.21.H.7.f.18. or such like. For it is a

general

neral rule ỹ in al cases where a cõmon person cannot ẽter but is driuen to his action, there the king can not haue the possession but by like action, or els by a scire facias after office foũd in nature of the accion, for the office in the case entitleth the king to no other thing but only to the action, as appeareth in H.21.H.7.fo.18. But quere of a feffemẽt that is found to bee made by collusion contrary to ỹ statut A.34. E.35.H.8.ca.5. for in that case it seemes his highnes may enter without scire facias because the sayd statut appoints no accion to bee sued in the case. And note that in all these cases before where the king is driuẽ to his scire facias or other action if the office bee false, the party may trauerse ỹ office with the king, keeping still his possession whether it bee in the chancery or any other court, and neede not to sue any Ouster le main if it bee found for him, because hee was neuer out of possession. Then further let vs see in what cases the king cannot bee ẽtitled but only by office or other matter of record, & in what cases hee may, howbeit not to haue any possessiõ either in deede or in law vntil ỹ time there be a seasure made. And as to that, note that in al cases where a common person cannot haue a possession neither in deede nor in law without an entre, there the king can not haue it without an office or such like matter of record, as where ỹ king hath title to enter for a mortmain or for a cõdiciõ broken, in this case ỹ king can haue no title vntill such time as the said mortmain T.9.H.7. f.2. or cõdiciõ broken H.2.H.7 f.8. bee foũd by office or by some other record, as it appereth P.15.H.7.6. So it is in diuers other cases concerning the kings prerogatiue as in ỹ case of Ideots, of lunatiks which haue lãds or tenemẽts, or when his highnes is to be ẽtitled for ánũ, diẽ et vastũ of persõs attainted P.49.E.3.11. or for an alienatiõ without licence or to seyse the tẽporalties of a bishop for a contẽpt 21.E.3.3. 29.30. & H.21.H.7.7. in all those cases his title must bee first found by office or otherwise appere of record for these rights his highnes hath õly as king.

But

But if his highnes haue cause to seise ỹ lãds of his widow ỹ hath maried her self wõut licence his highnes may seise, notwõstandinge there be no office foũd of her mariage, as it apereth in ỹ new Natura breuiũ. f. 174. Learn what should be the reason therof, more thẽ in the case of alienaciõ before. Like law hath bene vsed wher his highnes is to sese lands of priors aliens win this realme ratione guerre, his highnes doth it wout any office, for in both these cases ỹ kings title is notorio' enough althoughe it appeare not of record. But yet in those cases his highnes must seise ere hee can haue any interest in the lands because they bee penall toward the party & of these cases you shall find bookes. H. 21. H. 7. fo. 7. H. 14. H. 4. fo. 36. H. 22. E. 4. fo. 44. Other prerogatiues the kinge hath which extende onely to personal and transitory thinges ad bona et cattalla felonũ, wreke de mere, tresour troue, or the profites of landes of clerkes conuict of felony, or of persons outlawed in a personall action, to these things it semes the kinge is ẽtitled although there be no office or other mater of record found of them as it should apeare. H. 11. H. 4. fo. 41. H. 21. H. 7. fo. 7. et 27. li. all. ꝑ 50. And note that if the kinges title appere any way of record, it is as good as if it weare foũd by office. Therfore yf the kings tenãt alien wout licence which alienaciõ appeareth by fine or other mater of record, in this case if ther bee an other record found that proueth the landes to bee holden of ỹ kinge in capite vppõ these. ii. records together proces shalbe made against the party by Scire facias to come and shew why he should not make a fine for the alienaciõ 50. li. all. 2. Like law it is wher there is a record to proue that he that aliened is but tenant in taile of the kinges gift, and he pretending to be tenant in fee simple dooth purchace a licence of alienaciõ and alieneth and after dyeth without issue, which deathe is founde by office but nothing of this state taile or lycence appeareth in ỹ saide office, yet vpon all these records laied together ỹ king shall haue a Scire facias against the alience to show why the land should not be seised into his handes

and his highnesse aunswered of the profites since the death of ỹ tenaũt in taile, for when he was but tenaunt in tayle it appearethe that the lycence was pourchased vpon a false suggestion, and so voyde, and then the lands ought to reuerte to the kinge because hys reuercion could not bee discontinued. And this may you see 40.li.ass.30. Then last of all it is to bee seene whether the possession may bee taken from the kynge by entrye or not. And as to that, yf the kynges possession bee by matter of recorde, no person can dysseise hym or take the possession from him, for lyke as the kynge can not take by gyfte from any person but by matter of recorde, no more maye the possession departe from hym but by matter of recorde, and therefore his highnes cã not haue assise or Eiectione firme siue custodie, like as a common persõ may: but his highnes may haue a writt of raushymẽt of Garde vt patet, Garde 3.T.47.E.3. yea ℞ though the entry be not immediatly vppon hym but vppon his cõmittee or fermer, yet it is no disseisin to his highnesse as it appeareth a 4.H.7.1.M.2.H.4.7 M.14.E.4.f.2. and Suggestion 9.M.35.H.6. By the which sayde booke of 35. it also appeareth, that if the kynge or his commyttee bee cast out of the wardshippe of the lands that the remedy is in thys manner, that is to say, vppõ a suggestiõ thereof made in the Chauncery, there shalbee awarded a writte called Amoueas manum, and that vppon a certaine payne, which writte may bee awarded onely vppon his suggestion without anye presentment or enquiry, and thys writte maye bee graunted to the committe as well before possessyon had of the warde as after, for when the kynge was once possessed by office, and graunts it ouer yet this possession styll remaines, for the kynge abydeth still gardeyne notwithstandinge any such graunt: And therefore thys writte of Amoueas subpena lyeth for the graunte or committee, although the graunt bee absque aliquo inde reddendo. And if vppon this writte of Amoueas the defendaunt

daunt do not restore the thing, then shall goe out against him an attachement, vpon which writ the defendant maye appeare and shewe his title, which if it bee founde against him hee shall then make restitucion by iudgement and pay a fyne and aunswer the meane issues & profites. Thus doth it appeare that the kyng cannot be disseised or ejected if his highnesse bee once seised by mater of recorde. Otherwyse it is before his seisin bee by matter of recorde, for if before office a straunger ētre by title or without title this is no intrusion vpon the kinges possession, but in this case the heire may haue Assise of mort dauncester against the straunger if hee will, which proues that by his entry hee hath gotten both a freeholde and a fee simple. But as soone as the office is founde and the eschetour entreth, this possession of the straunger which entred without title is clerely vndoone, and the freeholde and the fee simple reuested in the heyre But if the entre of the straunger weare by title and afterwarde office is founde and the kynge seiseth, whether then it bee so or no learne. And it shoulde seeme to bee all one, or els the kynges seisure is not good, for howe can the kynge seise in an other bodyes ryght if the ryghte weare taken awaye before by an entrie: therefore it shoulde seeme eyther hys highnesse hathe no title in that case to seise or else by his seisure, the freeholde and the fee simple must reuest in the heire. But note that if the kynge will bye colloure of a recorde seise an other mannes lande, which recorde geeues him no title in deede, notwithstandinge anye such seisure, yet hee that hathe ryghte maye entre vpon the kynge, and bye hys entry reuestes againe in hym selfe both the freholde and fee simple as where yt is found the kynges tenaunt dyed seysed but of an estate for terme of lyfe the reuersion to an other and thys notwithstandynge the kynge seiseth, in this case if hee in the reuersion

on entre vppon the kynge this is a good entrie: and therefore the case was, he made a feffement after his entrie and it was thought to bee a good feffmēt. Like law is it where the kynge is entitled but onely to the profites as vppon an vtlagarie in a personall action or vpon the conuiction of a clerke, in these cases if the partie entre and make a feffemēt or if a straunger that hath title to entre doo entre hee dischargeth the kinge of hys interest, and of these maters, you shall finde bookes 9.8.H.4.f.16.H.21.E.3.f.1. H.3.H.7.f.2. H.10, E.3.f.2.27.all.H.50.T.9.H.6.f.2.f.H.21.H.7.f.7.

Enterpleder. Cap.xix

SOmetyme it happeneth that by two seuerall offices founde in one county seuerall parsones bee seuerallye found heires to one man, wherebye for asmuche as the kinge is brought in doubt to which of them his highnesse may make liuerie, they therefore must firste enterplede, and when by enterpleder the priuity of the bloode is tried betweene them, then his highnes ought to make the liuerye to him that is tryed to bee the next heire of him that dyed. As for an example, by one Diem clausit or speeyall commission in one countie one is found heyre to hym that dyed the kyngs tenāt and of full age, and by an other Diem clausit or speciall commissiō in the same county one other is founde heire also to hym that dyed and within age in this case the heire that was first founde shal haue a Scire facias in the chauncerie against hym or her ỹ was last foūd heire to come & shew why liuery should not bee made vnto hym

him of the land compriſed in ỹ ſcire facias as heire to him ỹ laſt dyed ſeiſed thereof, vpon which writ if a Scire feci bee returned and the party defendãt cometh not, or if he come and confeſſe that hee himſelf is not heire then the plaintife in the Scire facias ſhall haue his liuery, but if hee come and entitle him by the ſecõd office, & trauerſe the firſt as he needes muſt (for thenterpleader muſt needes reſt vppon ỹ firſt office, & not vpõ the ſecond) then as thiſſue is found, ſo ſhal hee or they for whom it is found, haue liuery. And this appeareth in the new Natura brevium fo.262. & P.16.E.4.f.4 Trauers. 44.P.36.E.3. Howbeit a great doubt riſeth in our bookes vppon this matter whether thenterpleder ſhal be forthwith after the ſecond office found or not vntil ſuch time as the heire that is found within age commeth to his age, and as it appeareth by the ſayd booke of.36.E.3. in this caſe, where one was firſt found of full age and after the other within age thenterpleader was forthwith, for it were no reaſon that hee that was right heire and of full age ſhould be delayed by the nonage of the other that is no heir And a ſtraunger ſhalbe receaued to trauerſe the office not withſtanding, the heire that is found by the office that is trauerſed bee within age. And then it is no reaſon that the heire in this caſe bee in worſe condicion thẽ a ſtraũger. But take it by the firſt office one is found heire and wythin age, and by the ſecond office an other is found heire, and of full age, whether in this caſe they ſhal enterplede or not. or whether thenterpleader ſhalbe before thage of ỹ other: And ſurely it ſhould ſeeme by the groundes and rules declared before vpon the writ of Diem clauſit extremum, that the ſecond office in this laſt caſe is void, becauſe there is no better title found for the kyng than was by the firſt, & then yf it bee voyd, there can bee no enterpleader. Howbeit in ỹ new Natura brevium fo.262. it appeareth to the cõtrary

hereof and that they shall enterplede in this case, and that the second office is not voide for there the heires founde by both offices were of full age. And yet that notwithstanding they enterpleded. And so is. T.5.E.4.f.4. where it is said that if by one office the heire is found within age, and by an other office an other is founde heire and of full age, that in this case they shall enterpleade, but not before the child come to his full age. And Tovvnsend iustice saith in P.1.H.7.fo.14. That if by dyuers offices. ii. bee seuerally found heirs and within age, now the king shall keepe the lands till theire full ages, and then they shall enterplede, and if they dye before enterpleder their heires within age, seuerall Deuenerunt shalbee awarded that is to saye, for euery heire one & by the same being found seuerally heires to their auncestors, they shal enterplede at their full ages, like as theire auncestors should haue doone if they had lyued, and if the dying of anye of them were without issue & the other found to be his heire then is thenterpleder determined. Thus may ye see how bookes vary in this matter, and yet by the waye note this difference, that is to saye, where by the first office the heire is found within age and where of full age, for by these bookes it should seeme that if hee bee first found within age, notwithstanding that by an other office an other is found heire and of full age, yet hee shall not enterplede with the other till hee bee of age, contrary it is if the first bee found of full age, and ỹ nert within age, and the reason may bee for that the kyng ys first seised of him that is within age, with whom the lawe weyes more in presumption to bee heire then with the other, and this tytle is the best title the king hath, for it entytleth his highnesse to a greater benefite then dooth ỹ second office, and this second offyce was found vppon a commission graunted more for the kinges benefite then for the heires that should bee founde by the same and therefore it

were

were reason that hee that is firste founde heire haue more fauor if anye fauour bee to bee shewed than hee that was laste founde heire, or at the leaste for the kinges benefite that the matter bee respited til the child bee of age.

Also the said Justice Townsend said further, P.1.H.7.f.14. that if one be found heire in one countie & an other founde heire in an other county, yet they shal enterplede, whyche cannot bee as mee seemeth H.2.H.7.f.12. for once wee haue a generall ground that a man cannot sue a general liuery by parcels but first hee must cause an office to bee found in euery shire where hee haue lands, & when all the offices be returned, then to haue his liuery & not before, then in thys case where one is found heire in one shire and an other in an other shire, heere none of them both can haue liuery, because hee hath no office founde but in one shire and not in the other: and then if there can bee no liuery there can bee no enterpleder, wherefore it shoold seeme in that case they cannot enterplede. And herewith agreeth the book in P.8 H.7.f.11. So no enterpleder can bee but where there is an office thorough the whole founde for euery heire in euery coũty where ỹ lãds lye, P.16.E.4.f.4. but it is not alway requisite ỹ there be seueral offices found, for somtimes vpõ one office founde by it self alone there maye bee an enterpleder, and that is where twoo bee found heires by one enquest as two twinnes that is to say, two children borne at a burden T.1.H.7.28. And it is to bee noted that euery enterpleder is to trie the priuity of blood only, that is to saye, whych of these that enterplede is nerte heire to him that last dyed seised, and not to trye theire rightes in the landes. And therefore if by one office one bee found heire of a generall taile, and by an other office an other is founde heyre to the same land as of estate in speciall taile, they shall not enterplede, as it appereth in H.21.H.7.folio.36. Also they must bee bothe founde heires to him that last dyed, and by

whose death the king did seise: for if one bee found heire to hym that died seised and another is found heire to the aũcester that died seised next before the last dying seised, ī this case they shal not enterplede, as it appereth in. Ÿ.2. Ÿ.6.f.5. Also they shal not enterplede but where both heires claym by one self title of lands holden of the king, for if the kings tenan t dye seised of lands holden of other as wel as of the king, & one is found heire to all the lands and by an other office an other is found heire onely to the lands holden of other, in this case they shal not enterplead, as it appeareth in Ÿ.12.Ē.4.f.18. for he ẏ is found heire by the secõd office can not haue liuery if thenterpleader were found for him, because hee is not foũd heire of all as is before remembred. And therefore Ÿ.21.Ÿ.7.f.35. if one be found heire virtute breuis and an other is foũd heire virtute officij, in this case they shall not enterplead, beecause hee that is found heyre virtute officij, can not haue liuery if thenterpleader did pas with him: for the nature of enterpleader is to haue liuerie for him with whom it is found. And note that not withstãding an enterpleader is not to trie the right in the land but onely the prinitie of bloud: yet the issue tried betweene thẽ shalbe an estopple afterward in an accion vsed of the possession of the same auncester by whom they clayme as in Assise of mordaunceſter or cosinage, as it appereth in Estopple 255.M. 4. E.2. And note that as two or more shall enterpleade that clayme as heires, euen so shall anye other that clayme not as heires but by some other title, if it bee so that theire title affirme the kings possession, as take the case to bee this. Land holden in chiefe is alyened to diuers persons at diuerse times, and this found by office the kyng seiseth, and after commeth euery of the alienees & prayeth to make his fyne and to bee restored, now they shall fyrst enterplede & try which of their feffemẽts ought to take place ere any of thẽ getteth restitutiõ, as apereth in 43.li.ass.P.20.

So

So it is if any of them come into the Chauncerye without proces & confesse thalienation, as it appeareth by the sayd book, for by the confession the king is entitled against him that confesseth as well as if it had been found by office.

Trauers. Cap.xx.

TRauerse for goodes was at the common law, but trauers for lands found by inquisition before thescheto*rs* is geuen by the statute made in the.34.yere of E.3. cap.14. which saith in this wise. Item acc̄ est que la ou terres ou tenem ents sont seisies en la maine le roy per office del eschetor conteignont que le tenaunt le roy ent fist alienation sās conge le roy ou que le tenant le roy per seruice de chiualer moruſt seisie des terres et tenem̄ts auantdits en son demesn̄ come de fee et son heir deins age et puis la cause certifie en la chauncery et celuy qui terres sont seisy veigne en la chācery et voet trauerser loffice qui fuit primes pris per mandement le roy, que les dits terres ne soient my seisables soyt a ceo resceu & soit le proces maundes en bank le roy a trier et ouster faire droit. This statut extends only to the offices taken virtute breuis aut cōmissionis, and not to the offices taken virtute officij. And also by this statute though ỹ trauerse were found for the party, yet might hee not haue had iudgement till a procedendo ad iudicium had been awarded. And therefore was there an other statute made in the 36.yere of the said king the.13.cha. the tenor wherof is this. Pour les greuouses complaints queux le roy auer oye de sō people de ses eschetours, et de lour male port il voet & ordeygne del assent auauntdir, que terres seisies en sa mayne par cause de garde, soyent saluement gardes sauns waste ou destruccion. Et que leschetour neyt null fee de boys, veneson ne pessoun, nauter ryens mes respoygne au Roye des issues et profites annuels proueygnauntes des

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dits terres ſans waſt, oũ deſtructiõ faire. Et ſil face autermẽt et de ceo ſoit attaint, ſoit reint a la volunte le roy, et rende al heire ſes damages au treble, a ſa proper ſuit, ſi bien deins age come de plein age, & eyent ſes amis tanq; il ſoit deins age la ſuit pur luy, reſpoignant al dit heire de ceo qui ſerra iſſint recouere. Auxint dauters terres ſeiſies en la main le roy par enqueſt doffice pris deuant leſchetor teignũ meſme ceſt ordinance et penance deuers leſchetours. Et ſil eyt nul hõe qui mette challenge ou claime as terres iſſint ſeiſies, qui Leſchetor maunde lenqueſt en la chauncellary deins le moys apres les terres iſſint ſeiſies. Et que briefe luy ſoyt liuere de certifier la cauſe de ſa ſeiſine en la Chauncellary, & illeoques ſoyt oye ſans delay de trauerſer loffice ou autrement monſtrer ſon droit et illeõques maunde deuaunt le roy affaire fynal diſcuſſion ſauns attender auter maundement. Et en cas que aſcun veigne deuaunt le chauncellor & monſtre ſon droyt per quel demonſtraunce per bones euidences de ſon auncien droit & bone title que le chauncellor per ſa bone diſcretion et aduis du counſale (ſil ſemble que il beſoigne auoire counſayle) que il leſſe et baille les terres iſſint en debate al tenaunt rendant ent au roy le value ſi au roy appertient en maner come il et les auters chauncellers deuaunt luy ount faits auãt ces heurs de lours bons diſcretiõs iſſint que il face ſuerte que il ne ferra waſt ne deſtructiõ, tanq; il ſoit aiudge. Et que les dits eſchetours preignent tiels enqueſts en les bõs vill' & per bons gents & de ceo ouertment, & par endentures affaires enter les dits eſchetours et ceux des enqueſts cõe auter foites eſtoit ordeignẽ per eſtatuts. Anno. 24. E. 3. Et ſi nul eſchetor face au contrary de ceſt ordinaunce ſuiſdit eit la priſon des. ii. ans, & ouſter ceo ſoit reint a le volũte le roy.

By the comõ law before the making of theſe ſtatuts a mã had no other remedy to auoid a falſe office but onely his petition. Howbeit in T. 24. E. 3. f. 54. wilby ſaith that if thoffice had been found before commiſſioners or any other thanne theſchetor, the party ſhould haue his trauerſe by thorder of the common law. Paraduenture he may be moued ſo to ſay

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because those statuts geue a trauerse onely to offices found before theschetors, making no mẽtion of any offices foũd before any cõmissioners. Also before these statuts if after liuery or Ouster le maine sued, ther had been a new office foũd whereby the king had ben entitled to reseise, & thereuppon a Scire facias according to the statut of Lincoln against the partie that had pursued the liuery or Ouster le maine to cõe & shew why the land should not be reseised, the partie in ỹ Scire facias might haue trauersed ỹ office that was so newly found, as I shall more plainly declare when I come to ỹ place C. 26. fo 80. Also Bab. sayd in the eschequer chamber before al the Iustices. Trauers. 47. An. 8. H. 5. that these statutes that geue trauerse are onely to be vnderstãd where ỹ king is entitled to ỹ land but for a time, as for wardship, alienaciõ wout licẽs & such like. But yf his highnes be entitled to ỹ fee simple or the freehold, there he ỹ is put out by the office shal not haue his trauerse, but is put to his peticiõ Tamen quere, for though ỹ first statut be thus as Bab. hath sayd, yet the second is not, but general, & therfore may bee extended to al offices what mater soeuer they conteyn, as appereth Trauers. 37. H. 19. R. 2. where it was foũd that one had encroched vpon ỹ kyngs demeines which office in deed was false for ỹ ỹ thing supposed to be ẽcroched was parcell of his manor ỹ was so preseẽted & no part of ỹ kings demesnes: in this case ỹ party being put out of ỹ parcel of groũde by theschetor was receiued to trauerse ỹ office, & yet thoffice entitled the king to the fee simple. Also those statutes seme not to geue trauerse but to him yis put out of possessiõ by ỹ office. But ỹ statut of. 8. H. 6. ca. 16. alloweth any trauerse pfred by him ỹ seeth hiself greued by any such enquest although hee be not put out of possessiõ by theschetor. And ỹ statut semes also to allow trauers of an office takẽ aswell before cõmissioners as before the eschetor. Howbeit that statut geueth no trauers but onely maketh thereof a rehersal.

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These statuts that geeue the trauerse seme to offer it generally to any man that wil desire it or that doth put chalēge or claime to the lands wherof hee is put out by any office. Howbeit ẏ expositiō hath ben otherwise that is to say, that his challenge or clayme must be such as the law wil admyt & allow, for euery man can not trauerse that would or that maketh his challenge or claime: for these statutes are intended wher the king is entitled by office only, for if his highnes be entitled by an other recorde beside ẏ office & entitled as it were by a double mater of record, the party shal neuer haue his trauerse. As take the case to be this, a man is attainted of treson by act of parlement or otherwise by verdit, & afterwarde it is foūd by office that the said person attainted was seised day of ẏ treason cōmitted of certaine lāds which in deede were neuer his lāds but mine in this case if I bee put out of my lād by this office I can not trauers it Causa qua supra, and yet I am a straunger to this record as appereth in 40.ass.24.Pl.49.E.3.11.H.10.H.6.15.H.4.E.4.2.& 12 H.14.E.4.fo.7. But if there bee no such record of attainder I shalbe receiued well ynough to trauers the office alleginge first to enure mee to a trauerse that there is no such record of attainder as appereth in Pl.4.H.7.fo.7.

Also hee that is found heyre by office shal not trauerse the same office that so findeth hym heyre (if that part of the office that concernes the tenure in chiefe bee true) although the reste of the office bee false: and therefore if the kynges tenaunt dye seised his heire being of full age, & by a false office the heire is found within age, in this case, hee can not trauerse thys office as appeareth. T.c.E.4.3. And the reason of it is because the heire cannot falsifie the office that he himselfe is to affirme by his liuery whenne hee shall sue it. For thoughe hee would cause an other office to bee found according to the trouthe of the mater, yet it were not to the purpose to help him, for ẏ best office shalbe takē euermore for ẏ king, that is to say, that that geues his highnes

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moſt auantage & the heire driuen to ſue his liuery vpõ that office onely, for ſeing the king is bound by an office as well as is the heire, it is reaſon if any be better for him thã other that he be bound to that onely, & not to the other, & the law preſumes the one office to be as true as the other vntil ſuch time a triall thereof be made, which triall cannot be by the heire for hee is bounden as I ſayde before by the office that is foũd with out any further choiſe having no prerogatiue in ſuch maters and if he ſhould be receaued to his trauerſe in this caſe, then vpon the trauerſe founde for him he ſhould haue the lãds out of the kings hands by an Ouſter le mayn wout any liuery ſuing, as lands that the king ought not to haue ſeiſed, which were incõueniẽt, For euery way ẏ king ought to haue ſeiſed thoſe lands againſt any ẏ claimeth to be heire vntill ſuch time as liuere be ſued therof. Like law it is where ẏ kings tenant dieth ſeiſed of land in diuers coũ ties his heyre being of full age, & in one coũtie the ſame heir is founden wỏ age & in an other coũty hee is foundẽ of ful age, in this caſe the heire ſhall not trauerſe thoffice ẏ foũd him within age Cauſa qua ſupra: for then for the lands in one coũty he ſhould haue thẽ out of the kinges hands wout any office or liuery ſuing. And this caſe appeareth in Trauers. 39. H. 32, H. 6. But if an office finde ẏ my father held his lãds of ẏ king in chief by knights ſeruice wherin dede hee held not of him in chief, in this caſe I ſhalbe receiued to trauerſe this office. For if I ſhould ſue my liuery vpõ ẏ ſame I ſhould be cõcluded euermore after to ſay, but ẏ ẏ lãds were holdẽ in chief of the king, & for ẏ cauſe I ſhalbe receaued to my trauerſe as euery ſtraũger ſhalbe in the like caſe: for if my trauerſe be true thẽ cã ẏ kig haue no cauſe to ſeiſe thoſe lãds & therfor not like the caſes before remẽbred, as appereth M. 1. H. 7. f. 3. & 28. The words of the ſtatutes be that he whoſe lãds be ſeiſed ſhal trauerſe or hee ẏ putteth challẽge or claime to ẏ lãd ſo ſeiſed. Theſe words be not ſo geñaly

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vnderstand as they be spoken, for most men vnderstand thē ỹ hee that wil challēge or claime but a terme of yeares onely shal not bee receyued to his trauerse where ỹ king is entitled to ỹ freeholde by thoffice, as where it is found that ỹ kings tenant is seised of certain lands & is dead wōut heire wherby ỹ lādes ought to escheate to the kinge, cometh one & sayeth that hee is tenaunt for terme of yeares of these lāds of ỹ demise of a straunger, without that that he ỹ is supposed to bee the kings tenaunt was euer seised of these lands this trauerse lyeth not in his mouth: for hee that hath but a chatell shal not bee receiued in any case to falsifie the record that geueth any man interest in the freholde although he bee a straūger to that record. Contrarye law is it of him ỹ hath a freeholde or inheritaunce in the land, for they shal trauerse the record in such case. Like lawe is it where the kynge is entitled but to the wardshippe of the heire of his tenaūt hee that is fermer of the dimise of a straunger shall not trauerse hys office although the kyng bee not entitled thereby to any freholde, for it was not the mynde of ỹ makers of these statutes to helpe them that claime but chatels which are accompted in law as nothinge, because they perishe and abide not. Et de minimis non curat lex. Holwbeit learne what the law wil in these cases, for I haue seene no bookes of thē. The lorde in title of wardship shal trauerse the office, and yet hee claymeth but a terme of yeares in the lande, as where it is found by office that such a one held lāds of the kynge in chiefe and dyed his heire wōin age where in deede he holdeth no suche lande of the kynge but only of me by knyghts seruice, in this case, I that am lorde shall trauerse this office, that is to saye, sheiwe howe they bee holden of mee by knyghtes seruyce wythout that they bee holden of the kynge, as appeareth in Ÿ.1.Ÿ.7.3. For there it toucheth the lords inheritance in the righte of

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his seignory & because he by ỹ false office is to lose ỹ profit ỹ is presently fallen by reason of his seignorye, it is reason he be receaued to trauerse the office. But if hee were but lorde in socage he shoulde not be receiued to his trauerse, because he thereby can make no title to the wardshipe of the body, & landes of the childe, for it is a good generall ground if the kinge be once seised, his highnes shall retaine against al other that haue no title, notwithstandinge it be found also that the kynge had no title but that the other had possession before him, as apeareth in. 37. lib. all. Pl. 11. wher it was foũd that neither the kinge nor the partye had title, and yet adiudged that the kynge should reteine, for thoffice that finds the kinge to haue a right or title to entre, makes euer the kinge a good title although it bee false, & his highnes therby may take possession against any other that is seised of ỹ landes, & reteyne vntill such time as thoffice be trauersed by him ỹ hath title and tried to bee a false office. And therfore no man shall trauerse thoffice vnlesse he make him selfe a title. And if he can not proue his title to be true although he be able to proue his trauerse to be true, yet this trauerse wil not serue him. As for an exãple, it is foũd ỹ kings tenãt died seised of certain lands that he held of the king in chief, his heire beinge with in age where in dede he had made a feffement in his life time to an other of those lands, it is no trauerse for the feffe to say he dyed not seised, but hee must first make him selfe a title by the feffement: and for asmuch as it is found that the landes are holden in chief, if he will make his title good against ỹ kinge he must shewe fourth a lycẽce of alienaciõ or a dispẽsaciõ therof, or els hee must trauerse ỹ tenure in chiefe as wel as he shal doo ỹ rest of thoffice, otherwise his title is not good as it apereth in p. 36. E. 3 Trauerse 44. et. 46. Liuery. 18. p. 36. E3. f. 4. p. 3. H. 4. 14. & H 3 h. 7 f. 14. howbeit Hussy holdeth opiniõ T. 1. h. 7. 28. ỹ no mã

may trauerse

trauerse the tenure but the lord or the heire onles hys tytle bee found by office, but whether the law be so or not lern, for as I take it the lord & euery straunger that hath a title against the kyng, makyng his tytle shall trauerse the office before his title be foũd by office: for when the trauerse is found for the party his title now appeareth of record, & by the trauerse found, the office which was the kings tytle is vtterly destroyed and gonne, so that now the king is not to make any liuery of the lands to any person but onely to amoue his hands from the same, with the mean issues and profyts as one ẏ had no cause to seise them. And therefore euery man may enter now that wil if he haue right or title of entrie to the lands, for the king deliuereth them to no person certain but onely ryddes his own hands of them as hee ẏ had neuer seised them, but otherwise it is where the king is to make liuery, for there his highnes must bee enformed certainly by matter of record who shalbe his tenant & who it is that ought to receiue the liuery at his handes least hys highnes be deceiued in thadmitting of his tenant which is & ought to be a great matter toward the lord, & therfore the cases be not like, wherefore I think a man may trauerse by force of the statutes without hauing their title fyrst found by office: & so be our bookes P.36.E.3. Trauers 44. M.12.e.4 f.18. P.16.E.4.f.4. & 43.li.ass. P.20. Yowbeit Trauers.45. T 5.E.4.f.5. seemes to way to ẏ contrary hereof, & P.12.H.6. also, where it is sayd ẏ if it bee found that the kings tenãt died seised where in dede hee was iointly enfeffed with mee now cã I not trauerse this office except an other office were found for mee. But contrary law shoold it bee if I had been found by the office iointenant with him for terme of life where in deede I was iointenaunt with him in fee simple, in this case I may trauerse thoffice, because mention is made of mee in the said office, this boke case admitted to be law, yet it varieth frõ the case before remẽbred of ẏ strãger

that

that trauerſed thoffice,for here thoffice is true, and when it is found by office that he died ſeiſed,this may bee although the ſayd dying ſeiſed were iointlye with an other for anye thyng that is expreſſelye found to the contrary, & then the king here is to admit an other tenaunt,as in the caſe of the liuery before of whom as yet hee hath no credible informacion, that is to ſay, by matter of record and then it ys like to the caſes of tenant by the curteſie,tenant in dower,and the deuiſee which in no wiſe cã be admitted to their eſtates vnleſſe mencion bee made of thẽ in the office or ſome other office or matter of record foũd for thẽ,as appeareth in P.9. H.7.f.24.Brief.618.P.46.E.3.et.M.11.H.8.Deuaunt.fo.17. & for none other reaſõ as I gather it but only for ỹ thoffice is true,& they are to be admitted ỹ kings tenants which cã not bee but by informacion by matter of record, vt ſupra. Thẽ let vs reſort to the place we were at before: ỹ is to ſay, no mã may trauerſe with the king vnleſſe he make himſelf a good perfect title,as to ſay ỹ the tenãt which is ſuppoſed to dye ſeiſed did enfeffe him,or ỹ a ſtraũger was ſeiſed & did enfeff him wout that ỹ he died ſeiſed. And ſo note by ỹ way ỹ he may conuey his title aſwel frõ a ſtraũger as from him that is ſuppoſed to dye the kings tenaunt,as appeareth in P.36.E.3 Trauers.44. & whẽ he hath made thus his title,thẽ he muſt trauerſe the kigs title which is thoffice,for it is not inough for him to reſt vpon his own title although it be neuer ſo ſtrong without aunſwering the kings title, yea although it were good againſt a comon perſon,yet againſt ỹ king it is not ſo wout trauerſing ỹ office. And therefore yf he wil ſay ỹ the tenant in his life time did leuy a fyne vnto him of theſe lands, Sur conuſaunce de droit come ceo quil ad de ſon done,by vertue whereof he was ſeiſed vntil ſuch time as he was put out by this office and prayeth reſtitutiõ, this is no ple againſt the king,and yet this matter were a good plee in aſſiſe of Mortdaunceſter brought by the heire,

for in that case hee should bee estopped by this fyne, which is executed to say the contrary therof, that is to say, that his father died seised without shewing how his father got the possession agayn sins the time of the fine leuied. But it is no ple against the king, for the king can not bee estopped namely in this case beeing a straunger to the record. And also the statut geeues a trauerse and by this maner of pleadyng hee taketh no trauerse. Like law it is if it bee found by office that the kings tenaunt in chiefe enfeoffed one B. without licence comes one D. and sayeth that hee dyed seised, and his heire entred and enfeffed him by the kings lycence, this is no plee without trauersing the feffement made to B. and yet against any comon person it were a good plee but not against the king, for his title must be answered fully: and that is the feoffement, & these cases appere in Trauers. 17. P. 46. E. 3. f. 43. li. ass. P. 20. Also it is not sufficient to trauerse one of the kyngs titles but hee must trauerse them al, for though the kings title that hee is seised by, be found not good, yet if there bee any other record that makes the kyng a title whereby hee may retayne the landes, the party must auoid also that title or els hee gettes no Ouster le mayne M. 9. H. 4. f. 7. but learn if there bee no such record in Esse or being at the time of the trauerse tended, and hanging the plee vpon the trauerse a new record that is to say, an office is found which entitleth the king whether in this case the party shall bee driuen to trauerse this office or not: ere he haue his Ouster le mayn. And it seemeth he shal not: for so he might be delayed of his possession infinitly by finding one office after another, wherfore this office foũd hanging the trauerse shalbee accompted in law as though it had been found after ỹ party had had his Ouster le maine in which case then the party vppon the first trauers found for him shalbee restored to his possession by an Ouster le mayne, and then after vppon a Scire facias sued against

him to shew why these lands should not bee reseised, vpon this new office found for the king, hee shalbee receiued in that Scire facias to trauerse this new office. Howbeit thys auantage hee winnes hereby, that is to say he then trauerseth with the king keping still his possession, where else hee should trauerse being stil out of possession. And this case ye may fynd T.11.H.4.f.80. & 9.13.H.4.f.8. Thus may ye see when a mã trauerseth wõ the kyng he must trauers all the kings titles that haue thẽ their being by matter of record, & is not boũden any further to aunswer for that time. Thẽ let vs see how the king shal replye vnto this trauerse: and in that it is to bee noted that ỹ king hath a prerogatiue that a common parson hath not, for his highnes may chose whether hee will maintain thoffice or trauerse the title of the party, and so take trauerse vppon trauerse, or when al his titles bee trauersed his highnes may choose to maintayne them all or els but one of them. 9.13.E.4.fo.8. But then note that if hee maintaine but one, that is to say, take issue but vpon one which is found with him that tended the trauerse, in this case the party shall haue his Ouster le mayne notwithstanding there bee no issues taken vpon the other titles H.4.H.7.f.5. but whether the king shall euer take auaũtage of thother titles after or not this is to be seene: & I thynk hee should, for thoughe the other titles shall not in this case let the party of his Ouster le mayne, yet it seemes the kyng may call the party agayne by a Scire facias to aũswere his other tiles, or else his highnes to reseise as I sayde beefore, for no nient dedire can preiudice the kyng nec tacita renunciatio, like as it may doo a common person. And therefore seeing hee did not renounce his other titles openly nor expressely, it seemeth his highnesse by hys prerogatiue shall haue aduantage of them at any other time when it shallbee his pleasure. And these cases yee maye see 9.9. Henry.4.f.6. Howbeeit it appeareth in the

said booke of Y.13.E.4.f.8.ỳ after the king ioineth an issue vpon a trauerse, his highnes cannot in an other terme waiue this issue & take a new, for so the party might be delayed infinitely of his right, which should bee as it were a wrong committed vnto the party, & the king by his prerogatiue may doo no man wrong: but after issue ioyned hee may demurre in law, and waiue this issue for there is no mater chaũged but the old remayneth. Y.3.E.4.f.26. And by the demurrer the law presumeth that this issue was misioyned and so might be a ieofaile, & therfore his highnes may demurre in law after issue, but not chaunge his issue & take a new. And note that if the party take a trauers which is iudged insufficient in the law, this is peremptory vnto him, & hee shall not bee receiued after to take a new, as appeareth in 40.ass.24. Holwbeit T.14.E.4. the contrary oppinion ys holden, and that it is not peremptory, because it proceedeth in the Chauncery which is the court of conscience. But as to that a man may aunswere and say that a Chaunceller hath two powers the one absolute the other ordinary, and this trauers is before him by an ordinary power, in which case al things touching the same must proceede as it should before any other ordinary iudge of the common law, and therefore it should appeare by a booke in H.4.H.6.f.12. & H 11.H.4.f.52.P.22.E.4.f.9. Trauers 12.H.3.H.7. that if the party be nõsuit in this trauerse it is peremptory vnto him, for so might he delay the king infinitly, tamen quere and learn whether one may proceede with a trauerse the heire being within age or els shal tary til he be of full age for the booke is in T.5.E.4.folio.5. that hee shall tarrye till the heire commethe to age. But in this question one maye make this distinction, that is to saye. Whether the trauers bee tended by a straunger or by the heire (for some times it happeneth, ỳ ỳ heire shal traũs as wel as a strãger)

For

For no more then a stranger can haue Ouster le mayn wout trauersing all the kings titles, no more maye the heire haue liuery without trauersing all his tytles, and then yf the trauerse bee to bee taken by the heire, hee shall not bee thereunto admitted vntill hee bee of age, because that beefore that time he hath no cause to haue his liuery. But that reason serues not where the trauerse is to bee taken by a straunger, and therefore it shoold seeme that hee shoold haue it by and by: For hee hath cause to haue an Ouster le mayn forthwith, and that with the meane issues and profits, and therefore it were no reason that the nonage of a thirde person shoold hinder him with whome hee is not to pleade or to trye anye right but onelye wyth the kyng.

For if the child haue right, hee may enter vppon the stranger after hee hath his Ouster le maine and trye his ryght with him: and so at no mischife. And note as I sayd beefore that the heire must trauerse all the kings tytles ere hee can haue liuery, and that whether the kinges tytle bee in hys owne ryght or in the ryght of an other, in hys owne right, as if there bee a recorde that prooues this lande to bee aliened without the kinges lycence or that thaunceftor of thenfant that woold sue his liuerye was but tenaunt for terme of lyfe, the reuersion to the king and hath made a feffement to the kings disheritaunce or suche lyke, in these cases notwithstanding the kyng dyd not seise by vertue of these recordes but onelye by vertue of thoffice whych found thaunceftour of thinfaunt dyed seised the kynges tenaunt in chiefe of estate in fee simple, yet the heire getteth no generall liuery vppon that office vntill such tyme as hee hath auoided these other recordes. And if hee haue it beefore: it is a cause of reseiser. So it is where the kyngs tytle is in right of any other, as if one bee founde heire by office, and after by an other offyce an other is found heyre

of the same lands to the selfe same auncestor, in this case hee that was first found heire cannot haue hys generall liuery vntill such tyme as hee hath destroyed the other tytle either by an enterpleder or a trauers, for if it so come to passe that hee cannot enterplede, then must hee trauers or by some other meanes auoide the recorde ere hee can haue hys said generall liuery, as if hee sue his generall liuerye otherwise it is then missued, and a good cause geeuen to the kyng to reseise. And this enterpleder or trauerse betweene them that claim as heires is by the order of the cõmon law and not by statute, and can neuer bee, but where both theire tytles bee found first by office, and the reason is, because that as sone as the matter is discussed betweene them, hee for whome it is found shall furthwith haue his generall liuery, whiche hee can neuer haue if his tytle bee not first found by office: & therefore not like the case where a stranger trauerseth with the king that is to haue but an Outter le maine, for there the king had no right to seise, and therefore his tytle neede not to bee founde by office as I haue said beefore. But in the other case who so euer shal claime the land as heire, his highnes hath right to seise in the right of the saide heire, and to haue his primer seisyne or wardship as the case dooth require. And therefore hys tytle must bee first found by office: but where one heire is to trauerse with an other heire during the kings possessiõ, this shal not bee vntill hee that is first founde heire by the office come of age, because vntil that tyme, the lands ought to remaine in the kings hands and then hee to haue liuery: but whether hee that was first found heire shoold tarry for thage of him that was last found heire I haue saide my mynde therein beefore in the tytle of Enterpleder cap. 19. But where a straunger is to trauerse, hee shall not tarrye for thage of the heire for the causes beefore remembred.

And

And so there appeareth to bee a great difference betweene a trauerse taken by him that is a straunger, and by hym that is heire. But at this daye most liueries that bee sued are speciall liueries, whych conteine in them selues a pardon, and therefore the missuyng of them is dispensed wall by the woords of the pardone conteined in the saide liuery. And so many of these thinges that I haue spoken of beefore are not much to bee obserued if the liuery or Ouster le maine bee not generall. (For I see no lett but that an Ouster le maine may bee graunted specially as wel as liuery) And laste of all it is to bee noted that this trauerse extends not to euery recorde that entytleth the kyng, but onely to such records as bee trauersable, as an office or such lyke, as I shall shewe my mynde therein more fully in the chapter of Petition. Other trauerses there bee whiche bee trauerses by order of the common lawe. And not by any statute, as trauerses vppon enditements or presentmentes, whereof I entende not to entreate in this place, among whiche trauerses there is also by order of the common law a trauerse concerning goodes and cattalles of persons attainted, for the whyche a man shall trauerse wyth the kyng although hys tytle thereunto bee by double matter of recorde. As take the case to bee, a man is attaynted of treason or felony or outlawed in a personell accyon and after by office it is founde that hee was possessed of a horse or anye other goodes as hys owne proper cattell where in deede they bee the goodes of a straunger, in thys case the sayde straunger shall trauerse thys office wyth the kyng. M.4.E.4.folio.24. M.13.E.3.fo.8. & M.47.E.3.f.26. So is it if it bee founde by office that a man outlawed in a personall accion is seysed of certeine landes whiche in deede are my landes, and thescheatour by force of that false office takes the profites, in this case I maye disturbe hym

without trauersing thoffice. And this case appeareth T.9. H.6.fo.20. Then further. The woords of the said statutes of anno.36.bee, that if anye come beefore the Chauncellor and shew his right, whereby it may appeere by good euydence that hee hath an auncient right and good tytle, then the chauncellor shall let the saide landes to the party that tendeth the trauerse yelding to the king the value if it bee aiudged for the king in maner as hee and the other Chancellor haue doone beefore him by theire good discretions, so that hee to whome it shalbee letten fynde surety to doo no waste or destruccion beefore the trauers bee discussed. By the woords of this statute it shoold appeere that the Chaũcellours beefore this tyme by their discretions had vsed to let the landes to the party to ferme, and that is true, for the king vsed so to doo vppon a peticion whiche was made to his highnesse by the order of the common law in steede of a trauerse now vsed, as appeereth. H.5. E.3.f.6. and therefore I think his highnesse may doo so at this day both vpon a peticion and a Monstrance de droit, although the statute make no mencion thereof, for so it was vsed to doo by order of the common law, as it appereth by the booke beefore. And of this matter see Trauers.12.H.3.H.7. Now is this statute amplyfied and made plainer in this poynt by the statut made in the.8.yere of H.6.ꝯ 16.chapter, whiche wyl that no lands or tenements seised into the kings hands vpon enquest taken beefore eschetours or commissioners bee in any wise graunted or letten to ferme by the Chauncellor or Treasorer of England or any other the kings officers, till the sayd enquestes or verdits bee returned fullye into the Chauncery or theschequer, but all that tyme shal abyde in the kynges handes and by a moneth after the sayde retourne, if it bee not so that hee or they that feele them selues greeued by the said enquest or that are put out of their

of theire landes and tenements come into the Chauncerye and offer to trauerse the saide enquestes and to take the sayd landes or tenements to ferme, whych if they doo then the saide Chauncellour, Tresorer, or other officer shall let them haue them to ferme shewing good euydence, prouyng theire trauerse to bee true accordinge to the forme of the statute of anno.36.Ed.3.to hold till the issue vppon the said trauerse taken bee founde and discussed for the king or els for the partye, and also fynding sufficient suertye to pursue the sayde Trauers wyth effect, and to render to the king the yerelye value of the tenementes whereof the trauerse shalbee so taken, if it bee discussed for the kyng. And if any letters patents of anye landes or tenements be made to any other person to the contrary, then the same to bee voide after the moneth. Hereuppon is to bee noted that the shewing of the euydence is onely rehearsed to the letting of the landes to ferme and not to the trauerse. For by this statute hee maye trauerse wythout shewing anye euydence, but not haue the landes to ferme. Also by these Statutes hee is not bound to no certeine tyme for taking of hys trauers, but only for taking of the landes to ferme, for hee may tende his trauerse when hee will so hee desyre not the ferme of the landes, But if hee will haue them to ferme hee must tend his trauers wythin the moneth, as appeareth.P.13.Edward.4.folio.8.and now by the statute of anno primo H. 8. chapter.16. hee hath three monethes liberty to doo it. Also note the thinges that hee must fynde suretye for, that is to saye, to sue with effect, to paye the rent after the trauerse bee discussed, and to doo no waste or destruction. In this woord rent is employed all the arrerages of the rent that shall encurre meane betwene the taking of the ferme and the discussing of the trauerse and yet it is not so expressed. Also the lease that is made to hym

that

that tendes the trauerse is not of anye terme certeine, but onelye by these wordes Donec discussum fuerit, for the wordes of the statute bee so, and therefore as soone as ỹ trauerse is founde againste him that tendeth it by and by the lease hee had in the landes by force of the statut is void wythout anye further proces, as appeareth in Ỹ. 4. Edwarde the 4. folio. 29. Howbeit forasmuch as the wordes bee to holde tyll the issue vppon the sayde trauers taken bee founde and discussed, for the kyng or for the partye, I woold learne if the party bee nonsuyt vppon hys trauerse or that the trauerse bee aiudged againste him vppon a demurrer in lawe, whether the lese shoold bee voyde or not, lyke as it shalbee vppon the issue found. And it seemes it shall bee by the wordes comprised in the saide statute of anno. 36. Edwarde. 3. But not by any wordes comprised in the saide statute of anno 8. Ỹ. 6. For the wordes bee tanque il soit aiudge, and therewith agreeth the booke in Ỹ. 4. Ỹ. 6. folio. 12. Also note that beefore this statute of an. 8 Ỹ. 6. The king did vse to graunt the custody bothe of the landes and body to anye other to whome hee woold after office and beefore anye trauers tended, and this graunt was good, beecause it was not then restrained by any statute. Howbeeit vppon the trauers tended a Scire facias shoold haue beene awarded against the patentee comprehendyng in the same all the trauerse. And if hee had beene returned, warned and came not, his patent had been void eo facto, as appeareth in the said booke of Ỹ. 4. Ỹ. 6. fo. 12. at least wise for the lands, and yet there was then no estatute that made them voide, quod nota. And then by and by they shoold haue been letten to ferme to him that had tended the trauerse. But now whether since the making of ỹ sayde statute of anno. 8. Henry the. 6. a Scire facias shalbee awarded against the patentee vppon a trauerse, learne

for

for the saide statute makes suche letters patentes voide for the graunt of the landes, but not so for the body, and therefore it seemes a Scire facias shalbee stil awarded and the graunt also of the saide landes is not voyde till after the moneth. And now by the saide statute of anno.1. Henry.8. not tyll after three monethes, and so it shoold seeme by the booke of P.5.E.4.fol.3.M.14.E.4.fol.1. H.8.H.6.folio.17. that a Scire facias shalbee awarded at this daye notwythstanding the statute of.18. Henry.6.ca.6. whiche ordeynes that all letters patentes made before the kings title found by inquisition retourned into the Chauncery or other matter of record shalbee voide. For that statute also extendes but to landes or tenementes no more than the other statutes doo, so that the graunte of the bodye or of anye other thing whiche is no lande or tenement is good at this daye before any office or inquisition thereof found. And it is further to bee noted that this statute of an.18. Henry.6. makes not suche letters patentes good for anye tyme whyche hee graunted contrary to the tenure of that statute but they be voide forthwith. And learne and enquire if at thys daye within one moneth or.iii.monethes after office found and returned, the maister of the kings wardes & liueries with aduise of one of the counsell of the kinges court of wardes & liueries made a lease of the wardes lands or of an ideotz landes beeing in the kynges handes for the tyme of the kinges interest in the same, and after within the tyme appointed by the statute comes a straunger and trauerseth ỹ office, whether in this case he shal haue the lands to ferme or not. And it seemes that no, because this statute ỹ geeues that power to the maister of the kinges Wardes, was made long tyme since the statutes of an. 8. or.18. H.6. that is to say in the 32. H.8.c.40. whyche statute is generall and no sauing or exception made of thother statutes beefore.

And

And then it is a generall rule Quod posteriores leges priores contrarias abrogant. And some thinkes at this day for wardes lands, or Ideots landes there shalbee no letting of them to ferme to him that tended the trauers, if they were letten before the trauers tended by the maister of the kinges wardes, but of other wards it remaines as it was before the making of this statute of an. 32. Henry. 8. and note that if the king seise not for any Wardship but onely for primer seisine because the heire is of full age, if a straunger in this case will trauerse it is to litle purpose. For if ỹ king by and by after will make liuery to the heire, the trauerse is beecome voide as appeareth T. 1. H. 7. fo. 27. for the kyng in that case hath no cause to reteine the lande, but to deliuer the same to him in whose ryght hee seised being able for it, and hee that tended the trauers is at no mischief, for hee maye now after this liuery pursue for his remedye against the heire, and if it shoold tarrye in the kings handes for the trauerse sake, his highnesse shoold then haue al the profits if the trauers were found wyth hym for all the tyme that the sayde trauers dyd depende, whereunto hys highnes hath no right but onely the heire, and therefore it seemes there shall bee no trauerse but where the lande is to abyde in the kinges handes for a certeyne tyme, as for Wardshippe, fyne for alienation, or suche lyke. But if hee that tended the trauerse bee founde heire by office, and ys to haue liuery of that lande as well as the other that was first found heire, otherwise it is for the reason made beefore. And so of an enterpleder, For in that case the kyng is bounde to make the liuery to him that is tryed ryghtfull heire, but not so in the case of a trauerse tended by a straunger whiche claimes not as heire, for hee is to haue no liuery, but only an ouster le maine, by whych ouster le maine the king deliuereth nothing but leaues his own possession

as

as one that hath no right to keepe the possession anye longer. And it appeareth sufficiently that hee hadde no ryght to keepe it after the time the heire that should haue it was of full age: Wherefore a straunger in that case cannot trauerse, for so two that hadde no right, by trauersing together might keepe the thirde that hath right from his possession: which was neuer the meaning of the makers of the sayd statutes. And notwithstanding that this booke. T.1.H 7.f.27. bee that after the trauerse & before the ferme graunted the liuery was made, yet that makes no difference, for whether the ferme were graunted before the liuery or after when the trauerse is become voyd by the liuerie, the ferme which dependeth vppon the same is allso voyde as mee seemeth. And note also that the sayd statut. 1.H.8.ca.10. whiche geeues three monethes for hauyng the landes to ferme makes no mencion of the treasorer of England, but onely of the Chaunceller, so that for any thing that is to bee letten by force of that statut it must bee doon onely by the Chauncelour and not by the treasorer. As it should seeme as well of offices returned into theschequer as into the Chauncery, and therefore within the moneth after an office returned into theschequer, the treasorer may let the landes to ferme to him that tendes the trauerse according to the sayd statut. 8.H.6. But if it bee to let after the moneth the Chaunceller of England must doo it as it should seeme. And note also that by a statut made Anno.1.Hen.8 cap.12. Any person that sued his liuery in time of king H.7. vppon any office that found hee held in chiefe where in deede he held not in chiefe, which sayd offices weare found by the procurement of Empson and Dudley in the tyme of ỹ said late king, may trauerse thoffice in like manner and forme as he might haue doon before the liuery sued, if it be so ỹ he be now seised of ỹ same lands, sauing that hee shall

not

not bee reckoned to the mean issues and profits. This statut seemes not to extend to the parties heires that had liuery, but onely to the party himself. Quere hoc. And note that in the court where thoffice is first returned into, there I shall tend my trauers: as if it bee returned into the Chauncery, then in the Chauncery, and if in the Eschequer, then in the eschequer, as in deede al offices virtute officij are retournable in theschequer onely, and such as bee virtute breuis vel commissionis be retournable in the Chauncery. M.4.E.4.f 24. And now by the statut of 33.H.8.cap.22. No escheto⁹ may sit virtute officij onely to fynd any office of lands holden of the kyng of the value of v.li.o⁹ aboue vppon payne to fo⁹fait.v.li.

Monstraunce de droit. Cap.xxi.

The Statute of anno.36.E.3. that geeueth a trauerse sayeth in this wise. Et sil eit nul home qui met challenge ou claime as terres issint seisies que leschetour maunde lenqueste en la chauncellary deins le moys apres les terres issint seisies, et que briefe luy soit liuere de certifier la cause de sa seisin en la Chauncellary, et illeōques soit oye sauns delay de trauerser loffice ou auterment mōstrer sō droit, et illeōques maunde deuaunt le roy affaire final discussion sauns attender auter maundement. This statut speakes both of trauerse and Monstraunce de droit disiunctiuely, whereby a man may gather, ỹ if Monstraunce de droit were not by thorder of the comon law as it is said H.9. E. 4.f.52.&.P.13.E.4 f.8. that it is: yet were it geeuen by this statut. And no booke ỹ bears date before this statut can I fynd ỹ treats any thig of Monstrance de droit. Wherefore

without

(without preiudice to any mans oppinion) mine oppinyon is that it is geeuen onely by this ſtatut, but whether it bee ſo or not ſo, I doo not greatly force. Let vs ſee what it is, & in what caſes it lieth. If the king be entitled by office or other matter of record that is trauerſable. Howbeit there is no cauſe of trauerſe for that the office or record is true, in this caſe any man that hath right to the poſſeſſion of ỹ freehold of this land which in ſhewing of his right is able to confeſſe this office and auoyd it, ſhalbee receiued (if hee bee put oute of his poſſeſſion or greeued thereby) to come into the Chauncery and ſhew his ſayd right, which being there prooued to be true, iudgement ſhalbee geeuen that ỹ kings hands bee amoued from the poſſeſſion of ỹ ſaid lãds with the mean iſſues and profytes to bee reſtored vnto the party that ſueth the ſayd Monſtraunce de droit. As for an example, it is found by office that the kings tenaunt by knights ſeruice in chiefe died ſeiſed of certain lands whych are diſcended to his heire beeing within age, where in dede in his life time I recouered this land againſt him, and ſuyng no execution) ſuffred him to dye ſeiſed thereof, now vpon this office returned into the Chauncery ſhal I come and ſhew my right, that is to ſay, this recouere and auerre that this land foũd by office is the land that I recouered or parcel thereof, which beeing ſo prooued and tried I ſhall haue an Ouſter le mayn H.3.H.7. Like law is it if the kinges tenant diſſeiſed mee of thoſe lands, & I made my cõtynual claime or that I had title to enter for condition brokẽ into the ſayd landes in the life of the kings tenaunt, and I entred and after was diſſeiſed by him. But quere if I dyd not enter in his life, whether now I may bee holpen by a Monſtraunce de droit vppon the kings poſſeſſion. And mee thinks not becauſe I haue no right in that caſe tyll I enter, for vntill that time the right continueth ſtill in him, ſo that the king then hath a right ere I haue a right which

ought

ought to bee preferred and take place ſince it is but for a tyme beefore myne. And for theſe caſes ſee the booke of H. 3. H.7.fo.2. But if the king bee entitled by matter of record not trauerſable as if hee bee entitled by double matter of record, in this caſe I cannot haue my Monſtrauns de droit no more than I can haue in the like caſe of Trauerſe, vnleſſe my title be found by one of the ſaid records H.9.E.4.f 51. As take the caſe to bee, it is found by office ỹ one ſuch ỹ holdeth of the kyng diſſeiſed mee, & thē committed a felony, vppon whom I entred, after which entry the ſayd tenant was attainted of the felony, in this caſe I ſhall haue the land out of the kings hands by a monſtraunce de droit cauſa qua ſupra. And yet the kinges title is here by a record & not trauerſable that is to ſay, thattainder. But what thē my title is alſo found by office, and appeareth by matter of record, which beeing prooued trew dooth clearely auoyd ỹ kyngs poſſeſſion, and that is the reaſon I ſhall bee receyued in this caſe to a Monſtraunce de droit, as appereth in H.3.E.4.f.26.A.4.H.7.f.6. And therewith agreeth ỹ booke. P.4.H.7.f.7. where king Richard ỹ third was attainted of of treaſon by act of Parliament and found by office that hee was ſeiſed of certain land, commeth one W. and ſayth that in the ſayd Parliament it was enacted that an attainder of treaſon had againſt the father of the ſayd W. ſhould bee auoyded and adnulled, & hee reſtored to his lāds, & ỹ theſe lands cōprized in the office were in the handes of ỹ ſaid king R. by atteinder of his father, & adiudged ỹ vpon this Monſtraunce de droit the party ſhould haue reſtitucīō becauſe his right appered by matter of record. Otherwiſe is it where it is foūd by office ỹ ſuch a one is attainted of felony & is ſeiſed of ſuch lands which are holdē of ỹ kyng, now he that hath cauſe to ſue his Monſtraunce de droit can not be admited thereunto by reaſon of theſe two records. Howbeit if it bee ſo that there is no ſuche attainder in deede,

thē may the party that would ſue a Monſtraunce de droit ſay that there is no ſuch recoꝛde of attainder, which beeinge founde true, hee ſhalbe receiued to his Monſtrance de droit as appeareth in ỹ ſaid booke. Ỹ.4 H.7.f.7. Foꝛ now is there no recoꝛde againſt him but onely the office, and notwithſtandinge that by thoffice thataindour is found, yet this findinge makes nothinge foꝛ the kinge: if it bee vntrue Foꝛ the iury can neuer finde a matter of recoꝛde, and if they doo, it is to litle purpoſe: foꝛ the recoꝛde is euer triable by it ſelfe, and if there bee ſuch a recoꝛde it will appeare thoughe they fynde it not, and if there bee none, the finding of it is voyde. Thus may you ſee ỹ a Monſtrance de droit lyeth ſometymes although the kyng bee entytled by double matter of recoꝛde, if it ſo be that the parties tytle apeare by matter of recoꝛde, oꝛ elſe it lyeth not. And yet Choke Lidleton and Nedham, helde oppinion in. Ỹ.14. E.4.7. that if it bee founde beforꝛe theſchetour that one was tenaũt in taile of certeine lands holden of the kinge the remainder to another in fee, and that hee in the remainder is outlawed of felony, and that tenaunt in taile is dead without iſſue, where in dede hee beinge tenant in taile beforꝛe the ſtatute De donis condicionalibus after that hee had iſſue enfeffed one B. in this caſe the ſaide B. ſhall ſhewe this matter, and that the vtlagary was after the feffement made and ſo haue the landes out of the kinges hands by a Monſtraunce de droit: But it ſhould ſeeme theyre oppinion is againſt the law and the bookes beforꝛe reherſed, vnleſſe this feffement were found by office, becauſe it appeareth that the king in his caſe is entytled by double matter of recoꝛde. And note that where the kinge is entitled but by office alone, there the partie may haue his Monſtraunce de droit although his title bee not founde by office, as wel as hee ſhould in ỹ like caſe if he were to take a trauerſe. Ỹ.9. E.4. f. But otherwiſe it is where the kinge is ẽtitled by an other

recorde beside the office which is not trauersable, there hee shall not bee receiued vnlesse ỹ tytles title appeare by matter of recorde. And note that if the kynge haue committed the land ouer, hee that sueth his Monstrans de droit muste sue a Scire facias against ỹ cõmitte euen as hee shoulde vppon a trauerse, and as for takynge the landes to ferme or for suynge the sayde Monstrans de droit durynge the time the heire in whose righte the king hath seised is wyth in age. Like law is to be vsed as is before declared vppon the tytle of Trauerse. C.20

Peticion. Cap.xxii.

PEticion is al the remedy the subiect hath whẽ ỹ kyng seiseth his lãd or taketh away his goods from him hauinge no title by order of his lawes so to do, in which case the subiect for his remedy is driuẽ to sue vnto his soueraine lorde by way of peticion onely: for other remedy hath hee not, as it hath ben sufficiently declared before vpõ the 15.cha. of the kings prerogatiue. And therefore is his peticion called a peticiõ of right, because of the right the subiect hath against the king by ỹ order of his lawes, to ỹ thig he sueth for. And this peticion may be sued aswell in ỹ parleñt as out of ỹ plemẽt, & if it be sued in the parlemẽt then it may be enacted & passe as an act of parleñt, or els to be ordred in like maner as a peticiõ ỹ is sued out of the plement which is in this maner, first after the peticion is endorsed it shal be deliuered to ỹ Chaũceler of Englãd, & thẽ shal ther be a cõmissiõ awarded out of ỹ chãcerie to find the righte or title of him that sueth the peticiõ, which being found by en

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quest, then he may enterplede with ỹ kinge and not before as apeareth in Pl. 18. E. 3. f. 15. M. 4. E. 4. f. 23. H. 11. H. 4. f. 52 & M. 10. H. 4. f. 4. And if vpō ỹ saide cōmissiō no title be foūd for the party but onely for the kinge, yet the petitiō shal not abate, but ỹ party shal haue a new commission in that case for the petition is but as voide vntil the parties title be foūd by office, and is not to be sayde depēdige vntil that time, as appeareth in. M. 3. H. 7. f. 13. Quere for he sued a new petitiō in that case. And note that when the petition is endorsed, the party must follow and pursue the same accordinge to the endorsement, or otherwise his sute is void: because the endorsement is his warrant there in, as appeareth in. Peticion. 1 M. 18. E. 3. P. 22. E. 3. 5. et Peticion 18. H. 46. E. 3 and therfore somtime billes of petition be endorsed and sēt into the kynges benche or cōmō place & not into the Chaūcery, and that groweth vppon a special conclusiō in his petition & a speciall endorsement vpon the same, for the general conclusiō is que le roy luy face droit et reason, which is as much as if he had prayed restitutiō of that that he sueth for: And there vpon such a general conclusion the endorsement is Soit droit fait as pties which euer is deliuered vnto the Chāceller, as is declared. But if the conclusion in ỹ petition be speciall and ỹ endorsement special, then they shall procede accordinge to the sayde special endorsement. As for an exāple, the kinge recouereth in a Quare impedit by de faute against one that was neuer summoned, in this case ỹ ptie ỹ lost can not haue a writ of disceit vntill such time as he haue sued vnto the king by petition for the sayde writt and if in his petition he conclude and pray that the kynge do him right generally nowe the iustices before whom the recouerie was had can not examine the deceit wythout an originall writ directed vnto them for that purpose, and yet before he obteined that writ his right shalbe enquired of by commission, but if hee conclude specialy in his petition that

it maye pleaſe hys highneſſe to commaunde the iuſtices to proceede to the examinacõ, which peticion is endorſed accordingly, thẽ may they do it wout any ſuch writ or cõmiſſion to be ſued, as appeareth in. M.10. H.4. fo.4. So euer the folowing and purſuyage of the thing muſt be according to thendorſement, for howſoeuer the concluſion in the petitiõ be the endorſement may bee alwayes as it ſhal pleaſe the king as me ſemeth, & accordinge to that the party muſt purſue it. And note that in euery peticiõ where the kynge hath graunted the lande ouer to an other, a Scire facias muſt bee awarded againſt the patentee like as it ſhallbe wheare a trauerſe or Mõſtrans de droit is tended, which patentee yf hee haue not ẏ whole fee ſimple but ẏ ther is a reuerſion in the kynge or that the kynge is bounde to warraunty, whẽ hee appereth vppon the Scire facias hee may praye a writ of Search to bee awarded into the treſorie to ſearch what theye can fynde for ẏ kinges title, as appereth in H.9. E.4 f.51. where Sottle ſayeth that euery peticion muſt make mẽtion of al the kynges titles, for if it bee found by the writte of ſearche that any bee omitted, the peticion ſhall abate: and the reaſon of it is becauſe that if on this ſute of peticyon the kinge take an iſſue with the party which is found againſt him, his highneſſe then ſhall be concluded for euermore to claime by any of the points conteyned in the ſayde peticiõ. And herewith agreeth ẏ boke T.16. E.4.f.6. Nota quere if ſearch ſhalbe graunted vppon a trauerſe or Monſtraunce dedroit, becauſe the ſtatute of An.14. E.3.cap.13. ẏ concerneth ſearch doth ſpeake only but of a peticiõ, but to ẏ it may bee ſayde that ẏ tyme of making of the ſtatut there was no trauerſe geeuen, And Skrene ſayeth Peticion.6. A. 7.H.5. that ſearch ſhal not bee granted but wheare one ſueth by peticion. And note alſo that in euery peticion whether it bee ſued in the parliament or ells where or whether ẏ landes remayne in the kynges handes or not in the

kynges

kings hãds but be granted ouer, yet writs of search shalbee awarded to search ỹ kings title ere ỹ party shal enterplead wᵗ the king. Also it appeareth in the booke of T.16.E.4.f.6 before remẽbred ỹ vpõ a petition the kings patẽtee had ayd of the king, & there appeareth also that if ỹ king be not entitled by any matter of record but without any title do ẽtre into my land wherby I sue vnto his highnes by petition, ỹ in this case no search shalbe graũted, because no title cã bee entended for the king in such case. Thus haue I opened & declared the maner of suing a petition, but to declare specially where it lieth & where not it were a long mater to entreat of. But generally & by general rules a mã may briefly declare it. that is to say, in al cases where the party hath a right against the king, & yet no trauerse or Monstraunce de droit will serue there is hee driuen to his petition. As for an example where the king is entitled by double matter of record. Like law is where he is entitled by a record not trauersable, as take the case the king recouered by assent and without title a straunger that hath good title shal not salsefy this recouery by a trauerse or Monstraunce de droit, but is driuen to his petition, so it is where the king recouereth by erroneus proces the partye shall not haue a writ of error, vntill he haue sued by petitiõ for it. P.17.E.3.f.31. So likewise it is yf lands are holden of mee by knights seruice a straunger brings a Precipe in capite of those lands againſt my tenaunt and recouereth by defaut, although by this recouery I am not put out of possession of my seignorye but that the tenaunt holdeth of mee as hee did beefore and also of the kyng by cõclusion, yet in this case if ỹ recouerer dye his heire wᵗin age, & the king seiseth the ward, I am driuen now to my petitiõ for ỹ ward, as appereth in T.17.E.3.37 for this is an other thing thã euer I was seised of. Also it is a general rule ỹ where a straunger that hath title can not

entre vpon a comon parson but is driuen to his actiõ, there hee can haue no remedy against the king but only a peticiõ as take ẏ case to bee. It is found by office the kings tenant in chief dyed seised his heire within age where in deede the said tenant had nothing but by disseisin doen to me, and I suffred him to dye seised without any claime made in thys case I get no remedye by Monstrans de droit or trauerse, but am driuen to my peticion. And so in al cases like where myne entre shoold be tolled if the lands were in the hands of a cõmon plõ, as apereth in M.7.H.4.fo.33. T.9.H.4.f.5 Also where as ẏ king doth enter vpõ mee hauing no tytle by matter of record or otherwise & put me out, & deteines ẏ possession frõ mee that I cannot haue it again by entry wõ-out suite, I haue then no remedy but only by peticiõ. But if I bee suffred to enter, mine entry is lawful, & no intrusion: or if the king graunt ouer the lãds to a stranger then is my peticion determined, & I may now enter or haue my assise by order of the comon law against the said straunger being the kings patentee, as appereth in M.4.E.4 f.22. & M.24.E.3.f.65.H.10.E.3.f.2. And a great difference is betweene this case & the case where the king is entitled by double matter of record or such lyke, for in these cases notwithstanding ẏ grant made ouer by his highnes of ẏ lãds to an other, yet am I driuen still to my peticion to the king & haue no other remedy M.7.H.4.fol.21. but it is not so in this case: & the reason of this diuersitie is because ẏ when his highnesse seiseth by his absolute power contrary to the order of his lawes, although I haue no remedy against him for it but by peticion for the dignities sake of his person, yet when the cause is remoued & a comon person hath the possession, then is myne assise reuiued, for now the patẽtee entreth by his own wrong & intrusion, & not by anye tytle ẏ the king grueth him for ẏ king had neuer tytle ne possession to geeue in that case: and therefore not lyke the other

cases

cases before, where the king hath the landes by the order of his lawes that is to say by double matter of record or such other lyke. And this appeareth in M.4.E.4.k.21.& 25. & M. 24.E.3.k.64. & Trauers.34. 33.li.ass. Like law is if I haue a rent charge out of certeine land & the tenaunt of the land enfeffeth the king by deede enrolled, now during ỳ kynges possession I must sue by petitiõ, but if his highnesse enfeffe a stranger I may distreine for my rent vpon the stranger, and so is it in all the cases before, where a man maye haue his trauerse or Monstrans de droit, if the lands be once out of the kings hands, the party then may haue his remedy ỳ the comon law geeueth him: for in all these cases the petition did lye only for the dignitie of his person & not for the right that hee had to the possession of the thing. But if the king purchaseth lands holden of mee, learne what remedy I may haue for my seignory during ỳ kings possession: for Wilby saith in Assise.124. M.20.E.3. ỳ I haue no remedy in ỳ case & if his highnesse make a feffemẽt of these lands to hold of him self, yet can I not distreine for my seignory like as I might doo in the case of the rent charge before, because there cannot be ii. seignories of one self land, but am driuẽ to my petition in this case, for the king vpõ this feffemẽt by order of his lawes should haue renewed ỳ seignory in mee that is to say, to haue made ỳ feffee to hold of me of whom it was holden before, as apereth in Petition.18. & 19. M.46 E.3. & M.17.E.3.k.59. & so hath it been vsed alwaies where his highnes hath lãds by forfeiture of tree sõ holdẽ of a cõmõ pson, if he make a feffemẽt of those lãds it must be Tenẽdũ of thẽ ỳ they were holdẽ of before as I haue opened vpõ ỳ.xii.chapter of the kings prerogatiue. And so it is where ỳ tyme is deuolued to his highnesse for a mortmaine: But ỳ is geuẽ by ỳ statut de religiosis. Also if the king disseise my tenãt, during this possessiõ I haue no remedy for my seignory but only by petitiõ, & if ỳ king ẽfeffe my tenãt to hold

of his highnes, yet haue I no remedy for my seignorye, but only by petition. But if one hold certain lands of mee which are falsely found by office to be holden of the king in Capite, & the king seiseth thē & enfeffeth my tenant thereof to hold of his highnes, in this case I may now distrein for my seignory & am not out of possession, and these cases appere. P.32.E.3.Assise.122.et.124.M.20.E.3. Auowry.113.& P.46 E.3.11. & ỳ reason of the diuersity is this, because ỳ in ỳ last case my seignory was neuer suspended, but euer more had his being & that notwithstanding ỳ office, for it did not appertaine to mee to trauerse the office & discharge ỳ tenure, but that matter was left to my tenant to doo, & seeing hee did it not hee hath charged him self of a tenure by waye of collusion to ỳ king as well as to mee, but it is not so in the other case. Also it is to bee noted ỳ if the king seise lands by title of wardship and make a feffement thereof in this case the heire neede not to sue his petition but may haue a Scire facias to repele the said letters patents, because ỳ king was deceiued in his grant as it appereth. T.7.H.4.f.17. & M. 21. E.3.f.47. For there the king him self is in possession still till liuery be made so the heire there hath no cause to sue by petition, & the king is bound to deliuer it vnto him i whose right he seised. Also note that sute by petition can be to none other thē only to ỳ king, for no such sute shal be made to the Queene or to ỳ lord prince, for these parsonages haue no such prerogatiue, as it appereth in P.11.H.4.f.7.P.10.H 4.Scire.fac̄.135.p.10.E.3.f.26.et voucher.110.M.14.E.3. but though the king be seised somtime in an other bodies right & not in his owen, yet the sute that is to be made must be by petition as wel as if he were seised in his owen right, as appeareth in.10.H.4.f 4. And as I said in ỳ beginning a mā shal haue his petitiō for goods as wel as for lāds, as wher the escheto seiseth goods of one ỳ is outlawed & hath accōpted for thē in ỳ Eschequer and after thutlagary is reuersed

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in this case the party hath no remedy for his goods but only by petition. And this case you shal see in. T.34.H.6.f.51. Howbeeit Carel by, & Hussey hold oppinion to the contrary heereof M.1.H.7.fo.7. And learne if a petition bee sued for landes and the pleintife bee nonsuit whether it be peremptory or not, beecause some saye that that suite is as yt were his writ of right, and hereof see the booke H.11.H.4 f.52. & M.3.H.7.f.14.

Where a Scire facias must bee sued beefore a liuery or Ouster le maine. Cap.xxiij.

IF the king bee seised of a ward and granteth it durante minore etate now when the heir commeth of full age and sueth his generall liuerye hee needeth not to sue a Scire facias against the patentee, because his estate is determined by ỹ full age of the heire, & yet it may bee ỹ the heire had forfeited his mariage vnto the patētee, & then hee hath good cause to retein the land till hee bee satisfied of the forfeiture. But the law shall not entend any suche forfaiture to bee, and therefore there needeth no Scire facias be sued. Like law is it, as seemeth if the king grant the wardship for no tyme certayn, but quamdiu in manibus nostris fore contigerit, if hee make a special liuery vnto the heire being within age, there needeth no Scire facias to bee sued, so is it where ỹ grant is but durante bene placito nostro, but if the king haue landes in ward & enfeffeth therof a stranger some thinke ỹ heire needeth not to sue anye Scire facias against ỹ feffee but at his pleasure, & some other think hee must, beecause his estate is not determined by the full age of the heire, as it is in the first case I put beefore. And it may bee ỹ an auncester collaterall

lateral vnto the childe hath released with warrãty whiche is descended which the fesee might plead if hee came in by Scire facias or els by the liuery the sayd warranty is vtterly lost, & these cases appeare P.7.H.4.f.17.21.f.32.f.41.M. 10 H.6.f.20.f.P.5.E.4.f.3.M.21.E.3.fo.47.H.3.H.7. fo.3. Howbeit me thiks it were wisedom for ỳ heire to sue a scire facias to thentent that he therby w̃ the kings help might repelle ỳ said letters patents & bring thẽ as it were out of his way, which thing hee may sooner bring to passe by the kings sute than by his own. Also the heire when he sues liuery nede not to sue any Scire facias against him that hath the lands to ferme vpon the trauers, as appeareth in T. 1. H.7.f.27. for he hath no term certain in the land but donec discussum fuerit, which woords are become voyd after the heire is of full age, because it can not be then discussed without prẽudice of the heire: and therefore voyd. Then further let vs see where hee that sueth by petition or that tendeth his trauers or Monstraunce de droit shal sue a Scire facias & where not. And as to that it is a generall rule that if the king haue graunted the wardship of the landes ouer for any terme certain, or graunted any other certain estate in the landes, he that sueth his petition, Monstraunce de droit, or trauerse must sue a Scire facias agaynst the kings patentee in such case, but he needeth not to sue any against the heire in whose right the king is seised of the lande, because he that sueth dooth not plead with the heir but onely with the king or such as hath his interest, as appereth in 37.lib.ass.11. Like law it is if the kings grant be but durãte beneplacito nostro, or that it be made hanging the trauerse petition, or Monstrans de droit, in this case hee that sueth nede not to sue any Scire facias. And these cases appereth P.5.E.4.f.3. &.Briefe.260.P.13.E.3. And note ỳ if ỳ kyng graunt the wardshyp to one whych grauntethe it ouer to the husband and to his wife, then must there a Scire facias

hee

be sued both against the second lesse and the patentee but the wife nede not to bee named in the Scire facias. For ther lyeth no voucher in this Scire facias. Howbeit in a writ of garde she should haue bene named, bycause of the voucher and this case is adiudged. Brief.618. Ꝑ. 46. Edwarde the thirde and yet neuertheless Neuton is of oppinion in 48. Henry the sixte f. 17. that no Scire facias shalbe awarded against the lesse in this case but onely against the kings patentee. And learne if the kinge grant but the body alone whether there nede any Scire facias to bee sued or noe. Also note this case, that is to say, where the king seised for ward shippe before office and made a graunt ouer, and after office was found wherby it appeared that the childes father in whose right the kinge seised, was but tenaunt for terme of life, ꝯ reuersion to an other in this case hee in ꝯ reuersion had an Ouster le maine withoute suing any Scire facias against the patentee, as it appeareth Ꝑ. 10. Edwarde the thirde f. 2. and at this day the case is more stronger for such a graunt were voide because it is before office. And therefore vppon any such voide graũt there nede no Scire facias And in. 14. Edward the fowerth fo. 7. it appeareth that one had trauersed an office which was sẽte into the kings bẽch to try and had forgotten to sue his Scire facias, and yet hee was suffred to goe agayne into the Chauncery to praye a Scire facias vpon the first trauerse for it was said that the Chauncery is a courte of conscience and for that cause the thinge that was there amisse may be reformed at al times. And learne if this Scire facias bee sued against many and one of them dyeth whether this shall abate the trauerse, Monstrans de droit, or petition wheruppon it is sued or els onely the Scire facias, It semes that nothing shall abate but the Scire facias because no mentiõ is made of the tenant nether in a trauerse, Monstrans de droit or peticiõ. And of this mater see the booke in Ꝑ. 7. Ꝑ. 4. fo. 33

Ouſter le maine. Ca. xxiiii.

OVſter le main is the iudgemēt that is geuen for him that tendeth a trauerſe or ſueth a Mōſtrans de droit or petition, for when it appeareth vpon the matter diſcuſſed that the kinge hath no ryghte nor title to the thinge hee ſeiſed, then iudgement ſhalbee geeuen in the Chauncery that the kings handes be amoued and therupō Amoueas manum ſhalbee awarded to theſchetour, which conteruailes as muche as if the iudgement weare geeuen that hee ſhould haue againe his lande as appeareth, in M. 24.E.3.65. and this iugemēt ſometime is geuen in ỳ kings bench and not in the chauncery, and that is in caſe where the parties deſcende to an iſſue, then for the tryall thereof theye of the chauncery muſt awarde a venire facias retournable in the kings benche at a certaine daye, at which day notwithſtandinge that the ſherief returne not the writ, yet the Alias venire facias ſhall not bee awarded out of the chā cery but out of the kinges bench: for there and no where els it is recorded, quod vicecomes non miſit breue, as appeareth in. Pa. 13. E. 4. f. 8. And when the iſſu is found for ỳ partie they of the kinges benche ſhall geue iugement & awarde an ouſter le main wōut ſuinge for the ſame in the chaūcery as appeareth in M. 21. H. 7. 5. f. 29. li. all. 43. & yet ỳ recorde of ỳ iſſue that was tryed was not ſent thether but onely ỳ tranſcript therof, but what then ỳ iudgement is to be geuen vpon the verdit which is there of record, and whē both courtes bee courtes of the common lawe and the kinges courtes, they vſe not to remaimd any thynge to the place from whēce it came but to geue iugemēt there where it is tryed, and Sharde ſayde that when a record comes once into the kinges benche, it ſhall neuer go from thence.

Alſo

Alſo note that ſometimes there goeth an Ouſter le maine as wel to the kinges patentee as to the eſchetour & that ys where the king hath graunted the thing that hee ſeiſed to any other, but notwithſtanding ỹ there goe ſuch writes of Amoueas manum both to theſchetor and to the partye, yet the kyng is out of poſſeſſion as ſoone as iudgement is geeuen in ỹ chancery, not forcing whether any of theſe writes bee awarded or not either to theſchetour or to the partye: and thereuppon the party for whome iudgement is geeuē may enter forthwith into the lands and ſhalbe ſayde no in trudor, as appeareth in H. 10. E. 3. fo. 2. And the reaſon of it is becauſe the iudgement tyeth not the king to the deliuery of the poſſeſſion, but only to leaue his handes of the poſſeſſion. And note that if a Diem clauſit come to the eſchetor hee by vertue of that writ beefore hee make any enquiry may ſeiſe the land for ỹ kings behoofe, whych after he hath once ſeiſed, if after by office no title bee found for the kyng then the party ỹ ought to haue again the land, may ſue for the ſame in the chauncery where the office is returned and then Amoueas manum ſhalbe awarded, for vntill the makyng of a ſtatute at Lincolne. Anno. 29. E. 1. called the ſtatute De eſcaetoribus the party had no remedy in ſuch caſe but only to ſue vnto the king himſelfe, as it appeareth by the ſaid ſtatute, and now that ſtatute geeues an Ouſter le maine vna cum exitibus. Howbeeit this Ouſter le mayn may not bee ſued by parcels no more then a liuery & therefore if diuers writes or commiſſions bee awarded into diuers counties to enquire after the death of A. B. & in one countye it is founde that hee holdeth nothing of the kyng but in ſocage, and in the ſame countye and by the ſame enqueſt it is found that he holdeth of an other by knights ſeruice yet ỹ lord by knightz ſeruice getteth no Ouſter le main vntil ỹ other enqueſtes be alſo returned in, Cauſa qua ſup.

For

For if hee should, thē hee should haue it for the lands & not for the body, and so should haue it by parcels, for the body may not be deliuered as longe as there is any ēquest to be returned in. And the reason of it is, because that enquest may finde a tenure of the kinge by knights seruice in chief, in which case his highnes ought to haue the whole landes, and if it bee but a cōmen tenure by knyghtes seruyce, yet his highnesse at the least oughte to haue the preferrement of the body, yea & though the lorde of whome it is founde to be holden be the archebyshoppe of Caunt or suche a one against whō the kings prerogatiue will not hold for ẏ land des, yet because it holds for the bodies he getteth no Ouster le maine vntil al the offices be returned in, for the reasō be fore made, as appeareth in Liuery. 29. H. 16. E. 3. Howbeit by fauor & grace of the court tharchebishope had his Ouster le maine before ẏ other offices retourned. And so note how in tymes past mē haue sued Ouster le maine vpō a seisin ma de for the kinge although the office foūd afterward did not entitle his highnesse. Howbeit at this day it is not so vsed, for thescheto' will not seise vnlesse there be an office found although he might lawfuly doo it by the words of the writ Diem clausit, which vsage I doo nothinge mislike, consideringe the greate trouble it auoideth that might else ensue to ẏ kinges subiectes, And note that in all cases where the king is seised or in possession of the lād by office or any other mater of record, his highnes seisin can not bee deliuered out of him vntill such tyme an Ouster le maine be sued as if the kinge be seysed by office of the land, of any Idiots or for ānū, diem & vastū of lands of any that is attainted, in these cases he that should haue these lands after the kynges title determined must sue an Ouster le maine, otherwise yt is where the kynge is not seised of the lād but only entitled to the profites, as of the landes of him that is outlawed in a personall actyon, or of clerke conuicte or such lyke, there

nede

nede no Ouster le maine to be sued, as appeareth in trauerse 48.H.4.E.3.f.47. and.9.H.6.f.20. and if the landes which is seysed into the kynges hands bee holden ioyntly by many yet euery one of them by hymselfe may sue his Ouster le maine of his owne parte without his companiõs, as appeareth in T..2.H.4.23.

Liuerye. Cap.xxv.

The maner of the suing of a general liuery doth partly appere in the title of Liuery in the great abridgement of iustice Fitsherbert A.12..H.4. Liuery P.4. & A.21. R.2, Liuery. P.5. Where it is declared ỹ after the heire that was in ỹ kings warde is come to ful age, then a writ De etate probanda shalbe awarded vnto ỹ shrife of the shiere where the said heire was borne, to ẽquire of his age, in which case it is required by the law that euery one that shall passe in that enquest shalbe of the age of. xliii. yeares, meanig therby ỹ they & euery one of thẽ should be of full age at birth of the childe, because that such haue better knowledge and remembraunce then other of lesser age haue, and that the heire that is in warde enforme the enquest by certaine signes and tokens of the tyme of hys birth, as to say, that that yeare there was a great tempeste or a greate plague, or such like, which signes so geuen in euidence shalbe returned by the sheriue as well as the principall mater. But whether it bee requisite to haue xii. or a lesse number in the sayde enquest or not, learne, for soome thinke that any number from two vpward will serue, because the triall is by proues, and see the newe Natura breuium f.253. E. where it appeareth ỹ this writ of Etate ꝓbãda

was

was directed to the eschetour of the countye where he was borne and not to the shirine. Howbeit note allwayes that they whcare the landes shall neuer ēquyre of this mater, vnlesse the birth and land weare both in one shire, for they haue enquired of it allredy, that is to say when they did finde the firste offyce. Thus when theye haue foūd his age, that inquest shallbee returned into the Chauncery, and from thence shalbe awarded a writte to the Lorde Keeper of the priuie seale, signifying vnto him that the heire is of full age, and vppon that a priuy seale shallbe directed to the Chamberlaine of Englande to receiue his homage, which beynge receiued, the sayde lorde Chamberlaine shall certify the lorde Chaunceler by wryte of the receipte therof, and then shall the heyre haue his liuery. But it seemes that if the heire were neuer in warde but of full age at death of his auncester and so founde by office that then he shal haue liuery as is declared vppon that office onely, without suing any writte of Etate probanda: for the writtes of liuery in this case make no mention of any Etate probanda as they doo in the other case, but if the heire bee within age and in the kynges warde and after when hee comes to his ful age other landes descende vnto him which the kynge also seiseth by an ēquestre that findes the heyre of ful age, yet this notwithstandinge he must nowe sue an Etate probanda vppō both offices, as appeareth in M.13.H.4.6. And the reason of it is, because the kyndynge of hym of ful age is but as voide as longe as there is a recorde which found him w̄ in age, to ỹ which record ỹ kynge might cleaue vnto as the best record ỹ maketh for him vntil such time ỹ cōtrary ther of be proued by the wryte of Etate probanda. Howbeit at this day the statut made Anno.33.H.8. hath much abridged

the

the fees that haue ben geeuen vppon the sute of a generall liuery, namely for liueries to bee sued of clere yerely value of v.li. or vnder, and that it may be sued without any office to be found. But I doo not see that the maner of the sute is in any other point altered or chaũged by the sayd statut but it remaines as it did beefore. And that statute also geeueth men licence to sue a general liuery of lands not exceedyng the clere yerely value of.xx.li. whereby I see no let but that a man may sue his generall liuery also for lands aboue the yerely value of xx.li. as he might haue done before the making thereof, for this statut is not contrary to any lawe ẏ was before in that point, sauing that a general liuery vnder the value of xx.li. can not passe or be sued if hee haue not first his warrant from the master of the kings wardes and liueries, surueiour, atturney, and general receiuor, or three of them, signed and subscribed with their names & hands. Thus may you see ẏ maner of ẏ suyng foorth of a general liuery, which liuery may not be sued by parcels as I haue sayd before, but entierly, that is to say, of all the lands the king is or ought to be seised of in his right that sues the liuery. And therefore if the heire sue liuery but of parcel of ẏ that is found by office, or if the auncester were seised of other landes than are found by office, if the heire sue his general liuery before an office thereof found omitting them in the liuery, the liuery is missued, as appeareth in Liuery. 28.T.12.R.2.P.44.E.3.f.1.& 25.& H.2.H.7. f, 12. & therefore it behooues the heire beefore hee sue his lyuerye to cause an office to bee founde in euerye sheere where his auncester hadde anye landes. And thys entier lyuerye is entended as well of landes holden of other lordes beeyng in the kynges handes as of the landes that are holden of the kyng, and therefore if a manne hold of the kyng in chiefe by knightes seruice and of other lordes in

ſocage & dye his heire being a daughter within the age of xiiij.yeres, in this caſe when the ſayd daughter cõmeth of the age of xiiij.yeares ſhee getteth no liuery of the lãds holden in ſocage: but muſt tarry til ſhee bee of ẏ age of xvi.yeres, ẏ ſhe may then ſue liuery of the whole, as appeareth in Liuery 19.H.35.H.6. But note that in ſome caſes one ſhall haue liuery of parcel, & that is where lands deſcẽd to diuers daughters & one is within age & the other of full age, now ſhee of full age ſhall ſue liuery with a partition of her part of al things that are ſeuerable: and this liuery is well ſued although it bee not of the whole lands deſcended, but if there be any things in ẏ kings hãds not ſeuerable, as aduowſons or ſuch like, ẏ muſt ſo remaine ſtill vntil the other be of full age, as appeareth M.38.H.6.f.9. And ſo note that in a generall liuery if any thing be omitted, the liuery is miſſued: and therefore ſome ſay ẏ after ſuch a general liuery had there ſhalbee a writ awarded to enquire of the concelemẽt, that is to ſay, whether the heir hath left out of his liuery or not any of ẏ lands that were his auncеſtors, which writ is called breue de terris concelatis. And ſee the ſtatut 28. E.3. ca.4. ẏ geeues the rents to them that ſue liuerye when the rent day cõmeth although it cometh nert day after their liuery. And loke more for liuery in ẏ expoſitiõ vpon the third chapiter of the kings prerogatiue.

Reſeiſir. Cap.xxvi.

REſeiſir lieth where a geñal lyuery or ouſter le mayn is miſſued by any perſon or perſõs vnduely and not according to the forme and order of the law, or vpon an office which is inſufficient in the law for the party to haue liuery or Ouſter le main, in this caſe ẏ king may reſeaſe

reseise the landes without suyng anye proces against the party, and shalbee aunswered of all the meane issues and profites receyued and taken from the tyme of their fyrst seisin if it were sued out of his handes by an Ouster le mayne and if by a liuery, then but from the time of the liuery. And the party that hath pursued it shalbe accompted none other than as an intruder vpon the kings possession after office, in which case no freehold shalbee adiudged in him, nor his wife of that possession shall haue any dower, as appeareth in Liuery. 3. P. 18. E. 3. H. 21. E. 3. f. 1. & M. 24. E. 3. folio. 65. But if one haue liuery or ouster le main by due proces, and after a record is found in the treasory or els where or an office in the countrey, whereby the king is entitled of a tytle growen vnto him before the suing of the sayde liuerye or Ouster le mayne, although the party should haue had no liuery or Ouster le mayne in case the sayd records had then appeared vnlesse he could haue auoided the sayd records, yet for as much as they did not then appeare, hee shall not bee now after liuery or Ouster le mayn cast out of his possessiō without a Scire facias to be pursued against him, for so hath the statut prouided that was made at Lincoln in the. 29. yeres E. 1. called statutum de Escaetoribus, the tenour whereof is this Ad parliamentum regis apud Lincolne tentum in octabis sancti Hillarij anno regni sui vicesimo nono per consilium regis concordatum est coram domino rege, ipso rege consentiente et illud extūc fieri et obseruari precipiente de consilio venerabilis patris VV. de Langton Couent. & Lychf. episcopi tunc eiusdem regis Thesaurarij, Iohānis de Langton Cācellarij et aliorū de cōsilio tunc ibidē presentiū, et corā rege, videlicet Cū inquisitiones p escaetores suos capte p quecunq; breuia regis in cancellaria ipsius domini regis fuerint retornā, & per easdem inquisitiones compertum

fuerit quod nihil tenetur de ipſo domino rege, per quod cuſtodie terrarum et teñ huiuſmodi ratione inquiſitionis in manum domini regis per ipſos eſcaetores capte ad ipſum dominum regem nullo modo pertineant: quod ſtatim & abſque dilatione aliqua mãdetur per breue domini regis de cãcellar' precipiend' quod eſcaetores de terris & tenementis ſic in manum domini regis per ipſos captis manum ſuam amoueant omnino, & exitus ſi quos leuauerint de ipſis terris et tenementis ſic in manum domini regis per ipſos captis de tempore quo terre & teñ illa in manu domini regis extiterint,integre reddant ipſi vel ipſis cui vel quibus per inquiſitiones prius per eoſdem eſcaetores captas compertũ fuerit quod terra et tenementa illa debeant remanere, ſaluo ſemper domino regi,quod ſi poſtquam eſcaetores ſui manus amouerint per breue ipſius domini regis, vt predictũ eſt,aliquid contigerit inueniri in cancellaria vel ad ſcaccarium,vel alibi in curia ipſius domini regis,per quod cuſtodia terrarum aut teñ eorundem,de quibus eſcaetores manus ſuas amouerint in forma predicta domino regi pertineant,quod ſtatim premuniatur ille,in cuius ſeiſina tenementa predicta fuerint per breue de cancellaria,quod ſit ad certum diem coram domino rege,vbicunque &c.oſtenſ. ſi quid pro ſe habeat vel dicere ſciat quare dominus Rex cuſtodiam earundem terrarum et tenementorum habere non debeat, iuxta formam euidentiarum ſeu memorandorum pro ipſo rege compertorum. Et ſi venerit,et pro ſe oſtendat quare eadem cuſtodia ad dominum regem non pertineat aut pertinere nõ debeat immo quod remanere ſibi debeat recedat quietus,& cuſtodiam ſuam retineat.Si autem premonitus non venerit, vel venerit, et nihil ſciat dicere,quare rex cuſtodiam illam habere non debeat, ſtatim reſeſientur terre & tenementa illa in manum domini regis nomine cuſtodie tenend' vſque ad legittimam etatem hered' eorũdem,ſicut ſuperi' dictum eſt

Et

Et si compertum fuerit per inquisitiones per escaetores suos factas et retornatas, quod custodia eorundem terrarum et teñ in inquisitionibus contentorum, et in manum domini seisitorum domino regi remanere non debeat, quod statim mandetur escaetoribus quod manus suas amoueant, et exitus integre reddant &c. Eodem modo si postea compertum fuerit per euidentias & memoranda in cancellaria aut scaccario vel alibi vt predictum est, quod dominus rex custod' eorum habere debet respondeatur ipsi domino Regi de exitibus integre per manus illorum qui terras, aut tenementa illa tenuerint a toto tempore, postquam terre et tenementa illa primo in manum ipsius domini Regis per escaetores suos capta fuerint per breuia supradicta & iste modus de cetero obseruetur in cancellario, non obstante quadam ordinatione nuper per dominum regem facta de terris et teñ in manum suam per ministros suos capt' & non liberád' nisi per ipsum dominum regem, & prout continetur in quadam diuidenda inter ipsum regem et cancellarium facta. cuius vna pars penes cancellarium remanet. Statutū de escaetoribus editum. 29. E. 2. **Also a yeare before the making of this statute was there an othere statut made entitled** articuli super cartas **which in ỹ 19. chapiter therof saith in this wise.** De rescheiue la ou leschetour ou le vicount seisont en le main le roy terres la ou il nad reson de seiser et puis quant troue est la nō reson les issues de mesne temps ount este ceo en arrere retenus et nad rēdus quát le roy ad le main ouste, voet le roy que desormes la ou terres sont issint seisies et puis le main ouste pur ceo que il ny ad raison de seiser ne tenir soient les issues pleinmēt rēdus a celuy a qui la terre demurt et auoit le dañ resceu. **By this statute it plainly appereth how that before the makynge thereof there was no** ouster le maine **graunted** vna cum exitibus **although it might neuer so plainly appere the kynge had no cause to seyse. Howbeit that mischiefe is now remedied by both these sta-**

tutes. Also by thone of these statutes it appeareth that the Ouster le maine in such case might not be graunted with out suinge to the kinge himselfe, which is also remedied by this statut de escaetoribus, which statute although it make no mencion of liueries, but onely of ouster le maine, yet liueryes are taken to bee within the compasse and prouision of the same. And where the letter goeth onely to the cases where the king seiseth before office, and after warde thoffice that is founde both geue his highnes no title, that there the party may haue his Ouster le maine makinge no mencion of an Ouster le maine to be graunted vppon any petycion, trauerse, or Monstrance de droit, as in dede a trauers was not in vre at that time, yet men by an equity extende this statute de Escaetoribus both to the one and and to the other, because the statute is beneficiall, as it appeareth Ph. 9 E. 4. 51. and in diuers other bookes. And Yeluerton there saieth that if after liuery or ouster le maine an office bee found which entitleth the kynge of a title growen vnto him since the liuery or ouster le maine granted that in that case this statute notwithstanding the kinge may reseise wt out a Scire facias, for the wordes are onely where a recorde or an office is founde that maintemeth the title whereby ỹ kinge first seised. Howbeit many holde oppinion againste him, and saie that it was in the selfe same mischiefe the statute was made for, tamen quere, for his statut de escaetoribus shoulde seme to be meant onely to remedy that ỹ was a mischief at comõ law before ỹ making of ỹ said statut, as where there was no record found at ỹ time of ỹ liuery or ouster le maine sued to let or hinder the partie from suynge of theire saide liuery or ouster le maine, but afterwardes was there found such a recorde, now this notwithstanding would the kinge reseise & put the partie from his possession wout answer or any proces sued against him, wherupõ he might answer & so driue him to sue by petycion & make him

render

render all ẏ mene pꝛofits which was a greate miſchiefe & hinderance to ẏ pt.e, foꝛ remedye wherof this ſtatute was made: but the like miſchiefe oꝛ hinderance is not where the kinge is entitled by a title growē ſince the liuery oꝛ ouſter le maine, foꝛ here the party ſhall not anſwer the pꝛofites but frō the time of this title growen. And alſo the kynge doth him no wꝛonge, foꝛ it ſtandes wō and affirmes ẏ liuerī oꝛ ouſter le maine, & the king therby makes not ẏ party an intrudoꝛ as he doth in ẏ other caſe, & if the ſaide Yeluertons opinion ſhould not be lawe, they would make ẏ the kynge could not ſeiſe vpon an alienacion wōut licence made and found by office ſince ẏ liuery oꝛ ouſter le maine ſued, which were no reſō, & therefoꝛe I thinke the ſaide Yeluertons opinion ſhould pꝛeuaile in this caſe. And to the ſame intente & effect be thoſe bookes ẏ I can fynde, foꝛ I can find no Scire facias ſued but in caſes of a title growē befoꝛe the liueries oꝛ ouſter le maine: & therefoꝛe in a Scire facias ſued vpō this ſtatute againſt ẏ party ẏ had liuerie oꝛ ouſter le maine beeing tenant of the lād at the time of Scire facias ſued he was demed in the ſelfe ſame plight & courſe againſt the king as he was at ẏ tyme of ẏ ſuynge of his liuery oꝛ ouſter le main foꝛ where he had made a feffement by licence & taken an eſtate againe iointly to him & other, yet this Scire facias dyd lye againſt him ſoly & did not abate, foꝛ the iointenaunce So was it aiudged in a Scire facias ſued vpon this ſtatute ẏ the party muſt maintain the title, wherby he hath liuery oꝛ ouſter le maine, & muſt maintaine it ſo that it is and was a good title & ſufficient to haue liuerie vpon, notwſtāding any recoꝛde that is now found, as take the caſe to bee this, one hath liuery as ſols daughter & heire, & after by office it is founde ẏ ſhe hath a ſiſter, which ought to haue had liuerī wō her, wherupon a Scire facias is ſued againſt the party ẏ had liuery, to come & ſhew why the land ſhould not bee reſeiſed, if ſhe come & will ſaye that they bee daughters by ſeueral

ueral ventres, & that this lande was geeuen to her father & mother in speciall taile, & so ought shee to haue the liuere as she had, ꝑ is to say soly, this plea wil not serue her, because it doth not mainteine ꝑ liuery: for how could she haue had liuery soly, vnlesse this matter had bene so found by office. For if this second office had appeared before the liuery, she coulde not haue trauersed it vnlesse she had made title, and then title can shee neuer make against the kynge as heyre vnlesse the saide title bee first founde by office. Wherfore no more than she might trauerse the said office if it had ben found before liuerie, no more may shee trauerse it now in this Scire facias after liuery, as it appereth. 30.li.Ass.28 & so note that the recorde cã not be trauersed in this Scire facias in no case vnlesse it were trauersable before liuery or ouster le maine. Also in the new Natura breuium fo.260. & in H.5. H.5.2. I find a Scire facias sued vpõ this statute against him that had liuery because an office hath found an other to be nerer heire to the auncestour that dyed than was hee that sued liuery. So alwayes as farre as I can finde it is sued vppon a recorde ꝑ disproues the liuery or ouster le maine, & not vpon any that affirmes it, wherby I suppose that Yeluertons oppiniõ is lawe as is before declared. And it semes that by this statute ꝑ king must sue a Scire facias although the recorde or title that is found for him bee founde within a yeare after liuery or ouster le maine, sued. And learne whether Assise lye against the eschetour that seiseth without a Scire facias ī cases wher a Scire facias should be sued. For by ꝑ sta. of W.1.ca.24. assise lieth against him in cases wher he seiseth any landes by colour of his office wont speciall warrant or commaundement or certeine authoritye ꝑ bee longeth to his office so to doo. And learne whether the king by that seisure hath any possession, for if the kinge seise wõ out a Scire facias where he ought to sue a Scire facias, ꝑ partie hath no remedy but to sue vnto him by petition euen as he should do if his highnes had seised any other lãds of his

without

without cauſe. Howbeit the king by ſuch a reſeiſer vndoeth not the parties poſſeſſion, ſo ỹ hee ſhalbee ſaid an entruder from the time of liuery or Ouſter le maine ſued as it dooth in ỹ caſe reſeiſer had been vpon a ſcire facias, wherefore in ſuch caſe although the partye cannot bee ſuffred to recouer his poſſeſſion againe by entry vpon the king, yet when the kyng graunts it ouer, hee may now enter or haue aſſiſe, as appeareth. 24. E. 3. fo. 64. & 43. li. aſſ. 29. Alſo note that this ſtatut that geeues the ſcire facias extends but vnto hym or thē ỹ haue liuery or ouſter le maine or any other claimyng by them. For if after liuery or ouſter le maine ſued a ſtrā-ger by an eigne title in diſaffirming the tenaunts intereſt enter as heire vppon him, or recouer by aſſiſe of mordaun-ceſter or any other accion auncеſtrel againſt him & is ētred into the land as heire now becauſe the lands are holden of the king in chiefe, his highnes may ſeiſe the ſaid lande for p̄mer ſeiſin or title of Wardſhip as the caſe dooth require without any ſcire facias, as appeareth in H. 21. E. 3. f. 1. For it is not to be ſaid now a reſeiſer, becauſe againſt him there was no ſeiſer made of the ſaid landes beefore. And learne and enquire if hee that miſſueth the liuery bee within age whether the king ſhall reſeiſe in that caſe as hee ſhall doo if it were miſſued by one of ful age, as take ỹ caſe to be, lā-des are holden of the king in Socage in Capite, now ỹ ly-uery is ſued within age, that is to ſay at the age of 14. yeres whether in this caſe ỹ miſſuing of ỹ ſame ſhal be a cauſe of reſeiſer or not, ſee ỹ booke therof Liuery. 28. T. 12. R. 2. The wordes of the ſtatut bee further, ỹ if any record be found in the treaſory or els where that vpon this record a ſcire facias ſhalbe awarded. But that is to be vnderſtand in this man-ner, ỹ firſt the tranſcript of the ſaid record ſhabe by writ re moued into the chauncery & then out of the Chaūcery ſhal there bee a ſcire facias awarded, & not out of the treaſory as it appereth. 21. lib. aſſ. 15.

Iſſue

Issues mesne. Cap.xxvii.

NOte that if the king haue a title, right or interest to any lands or tenements, his highnes whē he seiseth shalbe aunswered of al the mesne issues and profits from the time of his sayd title, right or interest growen, and whether it be a right of entre or title of entre it maketh no diuersitie in the kings case, as for an example, the king entreth for a cōdicion broken, his highnes shalbee aūswered of al the issues & profits sins the condicion brokē, & in that case a cōmon persō shal not haue the issues & profyts, but from the time of his entry. 18. ass. 18. Entre cong. H. 19. E. 3. Like law is it if the kings tenant aliē in mortmain, and the king entreth, but otherwise it is if he ētre for mortmain in lands not holden of him vpon a title reuolued vnto his highnes in defaut of other lordes. M. 41. E. 3. folio. 21 the same law is it where his highnes is entitled to seise for that the landes are of his foundacion, and aliened contrary to the statut of westm̄ 2. ca. 41. which geeues the writ of contra formā collationis, in this case his highnes shalbe aūswered of al the mesne issues growen from the time of the alienacion, as appeareth in Forfaiture. 18. H. 46. E. 3. And note also that if the king make any graūt which is not sufficient in the law or is deceiued in the making of the same by reason it was made vpō a false suggestion, in this case if his highnes dooth resume this grant & adnul it iure regis as he may, he shalbe then be aūswered of al ỳ mesne issues & profyts which were lost by reasō of ỳ said insufficiēt grāt, as apereth M. 11. H 4. f. 5. but if his highnes be ētitled to any lands nomine districtionis, there his highnes shall not bee aunswered of the profyts, but from the finding of ỳ tytle, as in case where the kings tenant in chief alieneth wythout

out licence & an office is thereof found, in this case his highnes shal not be aūswered of the profits from ẏ time of that alienation, but only from the time of the finding of ẏ office or from the time of a Scire facias returned where the alienation is of record, and hereof see the booke .P.8.E.4.f.4. Like law is where his highnes is to seise the lands of his wydow that hath maried her self without his licence. 40.li.ass. 36. And note ẏ where ẏ king is to be aūswered of ẏ mesne issues and profits perceiued & taken of any lands which haue come to sundry hands sins the kings title first growē to the same, there euery one of thē ẏ haue sūdrely so perceiued & taken the profyts shal aūswer for his own time & not one for all, as it appeareth in the booke of. 46. before remēbred. And note also ẏ by ẏ statut of w.2.ca.32. it is prouided that if any spiritual man bring any real action & recouer, that the land recouered shal remayn in the kings handes vntill such time as it bee sued out of his hands by him that recouered, or els by the chiefe lord and in the mean time the sheriffe shal aūswer the king in the eschequer of the profyts, by which statut whether the collusion bee found or not found, yet the king shal haue the meane issues as it is thought T. 20.H.6.f.38. So it is in a writ iudicial of deceite brought against any, ẏ king shal haue ẏ issues growē frō ẏ time of ẏ first iudgemēt vntil iudgemēt be geeuē in ẏ said writ of disceit but hereof note this differēce ẏ in a writ of disceit vpō a recouerye in a Precipe quod reddat of lande where the pces was a graund cape, if ẏ pleintif recouer, he shal recouer the land & his damages, but not ẏ issues of the land since the first iudgement, because the king shal haue them by the grand cape, and the sherif accomptable of them, quod vide titulo Disceit in Fits. 33. &. 46. P.12.R.2.P.2.E.3.H.8.E.3.f. 7. &. T.50.E.3.f.18. Contrary law is it if there lye no grand cape in the accion, as if the recouery be in a Scire facias, as it appeareth H.17.E.3.f.12.H.41.E.3.f.2. A.43.E.3.f.32. &. M.8.H.6.f.5.

Some

Some time the king recouereth of the issue in the allowās of an estraungers title, as if the husband beeing the kings tenāt vpon a false suggestion purchaseth licēce to alien & to take estate to him & to his wife, & so dooth, & afterward dyeth, the wife holdeth her in by title of Suruiuor & occupieth, now vppon a Scire facias against the wife, his highnes shalbee aunswered of all the mean issues since her occupying of the two partes of the lande, and the thirde part hee recouperh & alloweth for her dower. 40. li. all. F. 36.

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Cum priuilegio.